

San Francisco Law Library

No. 119931

EXTRACT FROM BY-LAWS

Section 9. No book shall, at any time, be taken from the Library Room to any other place than to some court room of a Court of Record, State or Federal, in the City of San Francisco, or to the Chambers of a Judge of such Court of Record, and then only upon the accountable receipt of some person entitled to the use of the Library. Every such book so taken from the Library, shall be returned on the same day, and in default of such return the party taking the same shall be suspended from all use and privileges of the Library until the return of the book or full compensation is made therefor to the satisfaction of the Trustees.

Sec. 11. No books shall have the leaves folded down, or be marked, dog eared, or otherwise soiled, defaced or injured. Any party violating this provision, shall be liable to pay a sum not exceeding the value of the book, or to replace the volume by a new one, at the discretion of the Trustees or Executive Committee, and shall be liable to be suspended from all use of the Library till any order of the Trustees or Executive Committee in the premises shall be fully complied with to the satisfaction of such Trustees or Executive Committee.

8 - 10 - 45

Digitized by the Internet Archive
in 2010 with funding from
Public.Resource.Org and Law.Gov



No. 10583

United States
Circuit Court of Appeals

For the Ninth Circuit.

—
NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME I
Pages 1 to 497

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

JAN 19 1944

PAUL P. O'BRIEN,

CLERK

No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME I
Pages 1 to 497

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Affidavit as to Service, Consolidated Complaint, etc. (Board's Exhibit 1-I)	25
Affidavit as to Service, Order Postponing Hearing, etc. (Board's Exhibit 1-C).....	30
Amended Charge (Board's Exhibit 1-M)	5
Answer to Consolidated Complaint, Consoli- dated (Board's Exhibit 1-B).....	31
Answer to Petitioner's Petition for Enforce- ment of an Order of the National Labor Re- lations Board	181
Certificate of the National Labor Relations Board	171
Charge (Board's Exhibit 1-N).....	2
Charge, Amended (Board's Exhibit 1-M)....	5
Complaint, Consolidated (Board's Exhibit 1-J)	10
Decision and Order	47
Affidavit as to Service	145
Exceptions of Idaho Refining Co. to Inter- mediate Report and to Rulings of Trial Examiner, Statement of	147

Index	Page
Intermediate Report	67
Affidavit as to Service	145
Conclusions of Law	138
Findings of Fact	73
Recomendations	140
Motion for Extension of Time in which to File Answer (Board's Exhibit 1-G)	27
Motion to Continue Hearing (Board's Exhibit 1-H)	26
Motion to Make More Specific (Board's Ex- hibit 1-F)	28
Notice of Hearing, Consolidated (Board's Ex- hibit 1-K)	23
Order Consolidating Cases (Board's Exhibit 1-L)	7
Order Designating Trial Examiner (Board's Exhibit 2)	188
Order for Extension of Time in which to File Answer (Board's Exhibit 1-D).....	30
Order Postponing Hearing and Designating Place of Hearing (Board's Exhibit 1-E)...	29
Order to Show Cause addressed to Idaho Re- fining Co. et al.	185
Return on Service of Writ	186

Index	Page
Order to Show Cause addressed to International Association of Machinists, etc.	183
Petition for Enforcement of an Order of the National Labor Relations Board	173
Recapitulation (Board's Exhibit 1-A)	1
Statement of Exceptions of Idaho Refining Co. to Intermediate Report and to Rulings of Trial Examiner	147
Statement of Points on which Petitioner Intends to Rely	180
Transcript of Testimony and Proceedings....	190
Exhibits for the National Labor Relations Board:	
1-A—Recapitulation	1
1-B—Consolidated Answer to Consolidated Complaint	31
1-C—Affidavit as to Service	30
1-D—Order for Extension of Time in which to File Answer	30
1-E—Order Postponing Hearing and Designating Place of Hearing	29
1-F—Motion to Make More Specific..	28
1-G—Motion for Extension of Time in which to File Answer	27
1-H—Motion to Continue Hearing ...	26

Index	Page
Exhibits for the National Labor Relations Board—(Continued):	
1-I—Affidavit as to Service	25
1-J—Consolidated Complaint	10
1-K—Consolidated Notice of Hearing	23
1-L—Order Consolidating Cases	7
1-M—Amended Charge	5
1-N—Charge	2
2—Order Designating Trial Examiner	188
3—List of Truck Drivers—Idaho Refining Co. showing Periods they Began Work and the Periods Work Ended	219
4—List of Truckdrivers, Idaho Refining Co., Mar. 31, 1942.....	220
5—Application Forms, International Brotherhood of Teamsters, Chauffeurs, Stablenmen and Helpers ..	239-257
A—James Alfors	239
B—S. R. (Pat) Burkholder	240
C—Guy Campbell	241
D—Boyd Cornia	242
E—Howard L. Davis	243
F—Wayne Douglas	244

	Index	Page
Exhibits for the National Labor Relations Board—(Continued) :		
G—Victor Ellingford		245
H—John P. Evans		246
I—Leonard Fowler		247
J—Chris R. Gregerson		248
K—A. L. Heckert		249
L—H. H. Henricksen		250
M—Carl E. Hill		251
N—A. Stanley Merrill		252
O—R. C. Miller		253
P—Robert W. Patterson		254
Q—John Ray		255
R—Leland W. Stanford		256
S—P. P. Stanger		257
T—Myron D. Whitesides		258
7—List of Officers and Directors of the Idaho Gas and Oil Co.		307
8—1941 Agreement, The Idaho Refining Company Employees' Benefit and Labor Association and The Idaho Refining Co.		352
9—1942 Agreement		355
12—By-Laws of Association		365

Index

Page

Exhibits for the National Labor Relations Board—(Continued):

15-A-B-C—Payroll Deductions, Oct. 1-15, 1941—Employees Benefit and Labor Association	392
16-A-B-C—Payroll Deductions, June 1-15, 1942	397
17-B—Minutes of Annual Meeting—Feb. 13, 1942, Employees Benefit Assn.	401
19—Notice of Separation and Disqualification, Leo Archibald	423
20—Payroll Record, Leo Archibald, 2/15/41 to 11/15/41	438
22—Telegram, Nov. 10, Firemen's Ins. Co. and Metropolitan Casualty Co. to Idaho Refining Co.	551
23—Notice of Separation and Disqualification, Stanley A. Merrill.	592
24—Oil Refinery Employees, Oct. 27, 1941, Showing Amounts Paid to Rosqvist and to Brandt	690
25—List of Receipts	692
25-A, B—Analysis of Mechanics Days Worked and Time Off for Period, Jan. 25, 1941-Nov. 13, 1941, Roscoe Charles Boyer and Oran Thomas	1071

Index	Page
Exhibits for the National Labor Relations Board—(Continued):	
26—Letter, Dec. 18, 1941, Decker Little to John P. Evans	732
28—Letter, Apr. 13, 1942, Decker Little to Wm. A. Babcock, Jr., Attorney	738
Exhibits for Respondent:	
2—Recap of Period that Leo Archibald Worked from Jan. 25, 1941 to Nov. 13, 1941	657
3—Application for Employment, Merlin Bowman to Idaho Refining Co.	664
5—Letter, Nov. 24, 1941, David M. Sweeney to Idaho Refining Co. ...	768
6—Condensed Balance Sheet as of Oct. 31, 1941, Idaho Refinery Co...	854
8—Letter, Kay Mills, D. W. Sutton, S. R. Pat Burkholder to Gilbert Moyle	938
9—Analysis of Mechanics Days Worked and Time Off for Period Jan. 25 to Nov. 13, 1941, E. H. Brown	987
10—Copy of Policy Number FM 29227 issued to Idaho Refining Co. et al. —Automobile Fleet	1035

	Index	Page
Witnesses for The National Labor Relations Board:		
Anderson, John		
—direct		262, 280
—cross		282
—redirect		300, 306
—recross		304
Archibald, Leo		
—direct		412, 432
—cross		431, 433
—redirect		450, 456, 466
—recross		453, 463
Ayers, James		
—direct		480
—cross		487
—redirect		493
—recross		495
Bowman, Merlin		
—direct		572
—cross		574
Carlson, P. W.		
—direct		362
—redirect		404, 405, 411
—recross		404, 408
Cornia, Boyd		
—direct		1073

Index

Page

Witnesses for The National Labor Relations Board—(Continued):

Douglas, Wayne	
—direct	534
—cross	544
—redirect	549
Duncan, Haskell	
—direct	308
—cross	329
Evans, John	
—direct	499
—cross	511
Fowler, Leonard Theodore	
—direct	577
—cross	582
Heckert, Arthur Leroy	
—direct	553
—cross	559
—redirect	564
McBride, Loren R.	
—direct	618
—cross	628
Merrill, A. Stanley	
—direct	587
—cross	596
—recross	598
—redirect	601

	Index	Page
Witnesses for The National Labor Relations Board—(Continued):		
Miller, R. E.		
—direct	601
—cross	607
—redirect	616
—recross	616, 618
Moss, Trevor		
—direct	565
—cross	569
Moyle, Gilbert D.		
—direct	191
—redirect	216
Owen, Lee		
—direct	221
—cross	261
Peters, Delmar R.		
—direct	337
—cross	359
Rosqvist, August		
—direct	678
—cross	691
Williams, Roy		
—direct	467
—cross	474
—redirect	479

Index

Page

Witnesses for Respondent:

Allen, H. McKay	
—direct	784
Benson, H. F.	
—direct	762
—cross	766
Brown, Earl H.	
—direct	837
—cross	845
—redirect	849
—recross	850
Copening, Frank L.	
—direct	631
—cross	669
—redirect	673
—recross	674
Henninger, C. E.	
—direct	904
—cross	922
—redirect	927
—recross	929
Jones, Harrison	
—direct	856
Little, Decker	
—direct	713
—cross	727
—redirect	740, 742

Index	Page
Witnesses for Respondent—(Continued):	
Moyle, Gilbert	
—direct	933
—cross	970
—redirect	985
Moyle, Henry D.	
—direct	989
—redirect	1023, 1033
Peters, Delmar R.	
—direct	1067
Primbs, Valerie	
—direct	857
—cross	859
—redirect	862
Rice, Kermit	
—direct	863
—cross	896
—redirect	899, 901, 902
—recross	902
Sheets, Gilbert	
—direct	794
—cross	801
—redirect	809
Sheppard, Willard A.	
—direct	827

Index

Page

Witnesses for Respondent—(Continued):

Turner, R. F.

—direct	743
—cross	758
—redirect	759
—recross	760

Watkins, Walter W.

—direct	774
—cross	781

Webb, Captain Arch G.

—direct	810
—cross	821
—redirect	821, 826

BOARD'S EXHIBIT No 1-A

RECAPITULATION

XIX-C-1071 and 1082

Charge	1-5-42
Amended Charge	4-14-42
Order Consolidating Cases	6-6-42
Consolidated Complaint and Notice of Hearing	6-24-42
Affidavit as to Service	6-25-42
Motion to Continue Hearing	7-6-42
Motion for Extension of Time in Which to File Answer	7-6-42
Motion to Make More Specific	7-6-42
Order Postponing Hearing and Designating Place of Hearing	7-9-42
Order for Extension of Time in Which to File Answer	7-9-42
Affidavit as to Service	7-9-42
Consolidated Answer to Consolidated Complaint	7-9-42

BOARD'S EXHIBIT No. 1-N

United States of America
Before the National Labor Relations Board
19th Region

Case No. XIX-C-1082

Date Filed 1-5, 1942

In the Matter of—

IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, AFFILIATED
WITH THE AFL.

CHARGE

Pursuant to Section 10.(b) of the National Labor Relations Act, the undersigned hereby charges that Idaho Refining Company at Pocatello, Idaho, employing 3 workers in Auto mechanic, repair trucks has engaged in and is engaging in unfair labor practices within the meaning of Section 8 subsections (1) and (3) of said Act, in that

1. On or about November 14, 1941, it, by its officers, agents and employees terminated the employment of Leo Archibald, machinist, because of his membership and activities in behalf of International Association of Machinists, Local No. 198, affiliated with the American Federation of Labor, a labor organization, and at all times since said date it has refused, and does now refuse, to employ Leo Archi-

bald in violation of Section 8, subdivision (3), of said Act.

2. By the acts set forth in the paragraph above, and by acts of interference, restraint and coercion, and by other acts and statements, it, by its officers, agents and employees interfered with, restrained and coerced its employees in the exercise of rights guaranteed in Section 7 of said Act in violation of Section 8, subdivision (1) of said Act.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the full name, local number and affiliation of organization, and name and official position of the person acting for the organization.)

INTERNATIONAL ASSOCIATION
OF MACHINISTS, LOCAL
No. 198, AFFILIATED
WITH THE AFL.

By ZENOS F. GEORGE,

Recording Secretary, 316 No.
9th Ave., Pocatello, Idaho.

Subscribed and sworn to before me this 31st day
of Dec., 1941, at Pocatello, Idaho.

[Seal] L. E. GLENNON,
Notary Public.

The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge.

TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN and
HELPERS, LOCAL 983, A.
F. L.

By LEE W. OWEN,
Secretary-Treasurer, 140
South First Avenue,
Pocatello, Idaho.

Subscribed and sworn to before me this 10th day
of April, 1942, at Pocatello, Idaho.

WM. A. BABCOCK, JR.,
Attorney, N.L.R.B.

BOARD'S EXHIBIT No. 1-M

United States of America
Before the National Labor Relations Board
Nineteenth Region

Case No. XIX-C-1071

Date Filed November 29, 1941

Amended April 14, 1942

In the Matter of

IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN, AND HELPERS, LOCAL NO. 983,
A.F.L.

AMENDED CHARGE

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that Idaho Refining Company, at Pocatello, Idaho, employing 95 workers in refining and marketing of gasoline and oil, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (2), (3) and (5) of said Act, in that

On or about November 14, 1941 the company discharged from its employ the employees hereinafter named because of their membership and activities on behalf of Chauffeurs, Teamsters, and Helpers, Local Union No. 440, predecessor of the under-

signed union, and in order to avoid and defeat collective bargaining with said Local Union No. 440: James Ayers, S. R. Burkholder, K. C. Brower, G. C. Campbell, Edward Boyd Cornia, Howard L. Davis, Wayne Douglas, Victor Ellingford, John P. Evans, Leonard Fowler, Arthur L. Heckert, H. H. Henriksen, Carl E. Hill, A. Stanley Merrill, Robert W. Patterson, John Ray, Leland W. Stanford, Parley P. Stanger, R. E. Miller, Myron D. Whitesides. The company has at all times since said date failed and refused to reinstate said employees to their former positions as truck drivers, except that it has reemployed two of said employees, R. E. Miller and K. C. Brower as truck drivers. By such action said company has violated Section 8 (3) of said Act.

Since on and before November 14, 1941 the said Local Union No. 440, and the undersigned union, as successor of the said Local, have been designated as their collective bargaining representative by a majority of the employees of the company in a unit appropriate for the purposes of collective bargaining, namely: all truck drivers employed by the company, exclusive of the truck foreman. At all times since on or about November 14, 1941 the company has refused to recognize or bargain collectively with the said Local 440, and the undersigned union as successor of said local, for said employees with respect to rates of pay, wages, hours of work and other conditions of employment, and has thereby violated and is violating Section 8 (5) of said Act.

Said company did in June or July, 1938 dominate and interfere with the formation of a labor organization of its employees, known as the Idaho Refining Company Employees' Benefit and Labor Association, and has at all times since its formation dominated and interfered with the administration of said organization and contributed support and assistance to it. By said acts the company has violated and is violating Section 8 (2) of said Act.

Said company has at various times, and particularly since November 14, 1941 inquired of employees and prospective employees whether or not they were members of labor unions and has made non-membership in outside unions or withdrawal from said membership as a condition of employment, and has by other acts and statements discouraged membership in the undersigned and encouraged membership in the said association.

By all the above acts and statements and other acts and statements the company has interfered with, restrained and coerced and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of said Act, and has violated and is violating Section 8 (1) of said Act.

BOARD'S EXHIBIT No. 1-L

United States of America
National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official

custodian of its records, do hereby certify that attached is a full, true, and complete copy of: Order Consolidating Cases in the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. XIX-C-1071; Idaho Refining Company and International Association of Machinists, Local No. 198, Affiliated With the AFL, Case No. XIX-C-1082.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 29th day of June, A. D. 1942, at Washington, D. C.

[Seal]

BEATRICE M. STERN,
Executive Secretary.

United States of America
Before the National Labor Relations Board
Case No. XIX-C-1071

In the Matter of
IDAHO REFINING COMPANY
and
TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS, LOCAL No. 983,
A. F. L.

Case No. XIX-C-1082
IDAHO REFINING COMPANY
and
INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, AFFILIATED
WITH THE AFL.

ORDER CONSOLIDATING CASES

A charge and an amended charge, pursuant to Section 10 (b) of the Act, having been filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local 983, A. F. L., in Case No. XIX-C-1071, a charge having been duly filed by International Association of Machinists, Local No. 198, Affiliated with the AFL, in Case No. XIX-C-1082, and the Board having duly considered the matter, and deeming it necessary in order to effectuate the purposes of the National Labor Relations Act,

It Is Hereby Ordered, pursuant to Article II, Section 36 (b) of National Labor Relations Board Rules and Regulations—Series 2, as amended, that Cases Nos. XIX-C-1071 and XIX-C-1082 be, and they hereby are, consolidated.

Dated, Washington, D. C., June 6, 1942.

By direction of the Board:

[Seal] BEATRICE M. STERN,
Executive Secretary.

BOARD'S EXHIBIT No. 1-J

[Title of Board and Causes.]

CONSOLIDATED COMPLAINT

It having been charged in the above entitled matters by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. L., and International Association of Machinists, Local No. 198, AFL, that Idaho Refining Company, hereinafter referred to as the Respondent, has engaged in and is engaging in unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, hereinafter referred to as the Act, and an order having been made and entered by the National Labor Relations Board consolidating said matters, the National Labor Relations Board, by the Acting Regional Director for the Nineteenth Region as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 2, as amended

Board's Exhibit No. 1-J—(Continued)

Article IV, Section 1, hereby issues its Consolidated Complaint and alleges the following:

I.

The Respondent is, and at all times since on or about December 17, 1937, has been, a corporation organized under and existing by virtue of the laws of the State of Nevada, with its principal office and place of business at Pocatello, Idaho.

II.

The Respondent is, and for several years last past has continuously been, engaged in the business of refining gasoline and selling and distributing gasoline, oil, and other products in the States of Idaho, Nevada, Utah, and Wyoming. In the course and conduct of such business the Respondent owns and operates, and for several years last past has continuously owned and operated, a gasoline refining plant near Pocatello, Idaho, and a fleet of motor trucks by which it transports and has transported various materials and products between various points in the States of Idaho, Nevada, Utah and Wyoming. The Respondent purchases and transports or causes to be transported and for several years last past has continuously purchased, transported or caused to be transported, large quantities of crude oil, lubricating oil, gasoline and other products from points outside the State of Idaho to its plant at Pocatello, Idaho and other points in the State of Idaho. The Respondent transports and sells, and has transported and sold, substan-

Board's Exhibit No. 1-J—(Continued)

tial quantities of gasoline, lubricating oil and other products from its plant at Pocatello, Idaho and other points in the State of Idaho to points in the States of Nevada, Utah and Wyoming.

III.

The Respondent sells and distributes the greater portion of the products distributed and sold by it by and through the agencies of Idaho Gas & Oil Company and Covey Gas and Oil Company of Idaho. These companies and each of them are, and for several years past have been, corporations wholly owned and controlled by the Respondent. The management of each of them is and has been under the direct supervision, direction, and control of the Respondent, and the Respondent is and has been an employer of the employees of each of them within the meaning of Section 2, Subsection (2) of the Act.

IV.

Chauffeurs, Teamsters and Helpers Local 440, hereinafter referred to as Teamsters Local 440, was for several years prior to on or about January 16, 1942, a labor organization within the meaning of Section 2, subsection (5) of the Act, and was chartered by, and a local unit of, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, affiliated with the American Federation of Labor, hereinafter referred to as the Teamsters Union. On or about January 16, 1942, Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. L.,

Board's Exhibit No. 1-J—(Continued)

hereinafter referred to as Teamsters Local 983, was chartered by the Teamsters Union as the successor to Teamsters Local 440, and at all times since said date has been, and now is, a labor organization within the meaning of Section 2, subsection (5) of the Act.

International Association of Machinists, Local No. 198, affiliated with the AFL, hereinafter referred to as Machinists Local 198, is, and for several years last past has been, a labor organization within the meaning of Section 2, subsection (5) of the Act.

Idaho Refining Company Employees' Benefit and Labor Association, hereinafter referred to as the Association, is, and for several years last past has been, a labor organization within the meaning of Section 2, subsection (5) of the Act.

V.

The Respondent, since before March 1940, has on various occasions interfered with, restrained, and coerced its employees in the exercise of their rights to self-organization and to bargain collectively through representatives of their own choosing, and has attempted to discourage the membership of its employees in Machinists Local 198, the Teamsters Union, Teamsters Locals 440 and 983, and other bona fide labor organizations, and to encourage membership of its employees in the Association, and in particular, as follows:

1. In about March 1940 Respondent by and through Kermit Rice, its truck foreman, inquired

Board's Exhibit No. 1-J—(Continued)

of an employee hired as a truck driver whether he belonged to the Teamsters Union or any labor union, and informed him that the manager of the company was opposed to unions and the membership of employees of Respondent in labor unions.

2. In about the month of August or September 1941, the Respondent through its general manager, Gilbert Moyle, and its secretary, Frank Copening, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that Respondent would not hire or retain in its employment truck drivers who belonged to the Teamsters Union.

3. In about the month of October 1941, said Respondent by and through Gilbert Moyle, its general manager, advised an employee of the Respondent at Boise, Idaho, that if the truck drivers employed by the Respondent joined the Teamsters Union the Respondent would discharge all of its truck drivers.

4. On November 13, 1941 the Respondent, by and through Kermit Rice, inquired of a truck driver employed by the Respondent whether he belonged to Teamsters Local 440 and whether the other truck drivers employed by the company belonged to said Local.

5. On about November 16, 1941, the Respondent by and through W. A. Sheperd, district manager of the Idaho Gas & Oil Company at Boise, Idaho, and an employee and agent of the Respondent, attempted to induce an employee of the Idaho Gas & Oil Company to report to the Respondent whether truck drivers employed by Idaho Gas & Oil Company at Boise were members of the

Board's Exhibit No. 1-J—(Continued)

Teamsters Union and advised said employee that employees who joined or belonged to said union would be discharged.

6. Since November 14, 1941, the Respondent by and through Kermit Rice, C. E. Henninger, truck dispatcher and warehouse manager, Gilbert Moyle, general manager, and Frank Copening, secretary of the Respondent, has inquired of persons applying for employment as truck drivers and of employees hired as truck drivers whether they belonged or had belonged to the Teamsters Union or any other outside labor organization, and advised them that the company was opposed to membership of employees in such unions.

7. In November and December 1941, the Respondent by and through Kermit Rice and C. E. Henninger, supervisory employees and agents of the Respondent, instructed truck drivers employed by Respondent to present any grievances they had directly to the management and not through Teamsters Local 440 or any outside organization or representatives, and indicated to said employees that the truck drivers employed by the company prior to November 14 had been discharged because they had sought to be represented by Teamsters Local 440.

8. In about January 1942, certain employees of the Respondent employed as truck drivers were transferred from Baker, Oregon to Pocatello, Idaho. At the time of said transfer Respondent by and through the agency of R. E. Stiff, instructed said

Board's Exhibit No. 1-J—(Continued)

employees that they should not engage in any union or concerted activities while employed at Pocatello or discuss working conditions with other drivers employed by the Respondent.

VI.

On or about November 14, 1942 the Respondent discharged from its employ James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Wayne Douglas, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Hendricksen, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger and Myron D. Whitesides, and at all times since said date has failed and refused to reinstate said employees or to reemploy them as truck drivers, except that the Respondent did, on or about March 11, 1942, rehire R. E. Miller as a truck driver. Said employees were discharged and have been refused reinstatement or reemployment as truck drivers because of their membership in or activity on behalf of Teamsters Local 440, and in order to discourage membership in said Teamsters Local 440 and to avoid Respondent's obligation to bargain with said Teamsters Local 440.

VII.

On or about November 14, 1941 the Respondent discharged Leo Archibald from its employ and at all times since said date has failed or refused to reinstate or reemploy him because of his member-

Board's Exhibit No. 1-J—(Continued)

ship in or activities on behalf of Machinists Local 198, or his activities on behalf of Teamsters Local 440.

VIII.

The employees of the Respondent employed as truck drivers, excluding the truck foreman, constitute, and at all times since before November 14, 1941 have constituted, a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment within the meaning of Section 9, subsection (b) of the Act.

IX.

At all times since on and before November 14, 1941, Teamsters Local 440 and Teamsters Local 983, successively, have been designated or selected by a majority of the employees of the Respondent in the unit above described as their representative for the purposes of collective bargaining with the Respondent, and under the provisions of Section 9, subsection (a) of the Act have successively been, and Teamsters Local 983 now is, the exclusive representative of the employees in said unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

X.

At all times since on or about November 14, 1941, the Respondent has refused to bargain col-

Board's Exhibit No. 1-J—(Continued)

lectively with Teamsters Local 440 and Teamsters Local 983 with respect to rates of pay, wages, hours of employment and other conditions of employment for the above-described unit, and in particular as follows:

1. On or about November 14, 1941, Teamsters Local 440 requested the Respondent to recognize and bargain collectively with said Local as the exclusive representative of the employees in said unit, with respect to rates of pay, wages, hours of employment, and other conditions of employment.

2. On or about November 14, 1941, Respondent, as a part of its plan to avoid its obligation to so bargain with Teamsters Local 440, discharged from its employ all the employees in said unit.

3. On or about November 21, 1941 the Respondent, although advised that Teamsters Local 440 claimed to represent a majority of the employees in said unit, refuse to recognize said Local as the exclusive representative of such employees and refused to negotiate or discuss with said Local a collective bargaining agreement or the discharge or reinstatement of the truck drivers discharged on or about November 14.

4. At all times since November 21, 1941, the Respondent has failed, neglected, and thereby refused to so recognize Teamsters Local 440 and 983, or negotiate or bargain with said Locals with respect to rates of pay, wages, hours of employment or other conditions of employment for the employees in said unit, or the discharge or reinstatement.

Board's Exhibit No. 1-J—(Continued)
ment of the drivers discharged between November
14 and 24, 1941.

XI.

In about July and August, 1937 the Respondent dominated and interfered with the formation of the Association, and in particular as follows:

1. Supervisory and confidential employees of the Respondent, and in particular George Hibbler, chief chemist, and Gilbert Moyle, general manager, initiated, suggested, advocated, or approved the organization of the Association.

2. The meeting or meetings of employees at which the Association was organized, its by-laws adopted and original officers elected, were held on the premises of the Respondent and no rental was charged by Respondent for the use of its premises for said meeting or meetings.

3. The officials, supervisory employees and confidential employees of the Respondent attended and participated in such meetings and by such attendance and participation and statements made at such meeting or meetings, participated in, assisted and encouraged the formation of the Association.

XII.

At all times since its formation, as above alleged, the Respondent has dominated and interfered with the administration of the Association and has furnished financial and other assistance to the Association, and in particular as follows:

1. The officials, supervisory employees and confi-

Board's Exhibit No. 1-J—(Continued)

dential employees of the Respondent, as above alleged, participated in and influenced the adoption of the by-laws of the Association which govern and regulate the administration of the Association.

2. The officials, supervisory employees and confidential employees of the Respondent have been, and now are, members of the Association, have attended meetings of the Association and have contributed financial support to said Association in the form of dues and assessments, and have participated in and influenced the conduct of the affairs of the Association.

3. Certain supervisory and confidential employees of the Respondent, including C. E. Henninger, Earl Porter, P. W. Carlson, George Farnsworth, have held offices and served on committees of the Association and solicited members for the Association among the employees of the Respondent.

4. The Respondent has permitted the Association to hold the meetings of its membership, board of directors and committees, on the premises of the company and has not charged the Association any rental for the use of said premises.

5. The services of stenographic employees of the Respondent have been donated by the Respondent to the Association.

6. The Respondent has granted to members of the Association, or caused to be granted to such members, a discount or reduction in the purchase price of gasoline, oil and other products purchased by members of the Association from the Covey Gas and Oil Company of Idaho.

Board's Exhibit No. 1-J—(Continued)

7. In June 1941 the Respondent, by and through Gilbert Moyle, its manager, caused a meeting of the membership of the Association to be held in order to discourage and defeat concerted activities of employees acting independently of said Association, and dominated and interfered with the conduct of said meeting.

8. In June 1941 the said Gilbert Moyle caused a purported collective bargaining agreement to be entered into between the Respondent and the Association, and dictated and prescribed the terms and provisions of said agreement.

9. The Respondent, by its opposition to outside labor organizations, as alleged in Paragraphs V, VI, VII, VIII, IX, X and XI above, has rendered assistance to the Association.

XIII.

By the acts and statements of the Respondent alleged and described in Paragraphs V, VI, VII, VIII, IX, X, XI and XII herein, and by each of them, the Respondent has interfered with, restrained and coerced, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed to them in Section 7 of the Act, and has engaged in unfair labor practices, and is engaging in unfair labor practices, within the meaning of Section 8, subsection (1) of the Act.

Board's Exhibit No. 1-J—(Continued)

XIV.

The Respondent, by the discharge of and refusal to reinstate or reemploy certain of its employees as alleged in Paragraphs VI and VII, has discouraged and is discouraging membership of its employees in Teamsters Locals 440 and 983 and Machinists Local 198, and has encouraged and is encouraging membership of its employees in the Association, and has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (3) of the Act.

XV.

By its refusal to bargain collectively with Teamsters Local 440 and 983, as alleged in Paragraphs VIII, IX and X, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (5) of the Act.

XVI.

By the acts and statements alleged in Paragraphs XI and XII, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsection (2) of the Act.

XVII.

The activities of the Respondent alleged in Paragraphs V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV and XVI herein, occurring in connection with the operations of the Respondent as described in Paragraphs I, II and III herein, have a close, intimate, and substantial relation to trade, traffic

Board's Exhibit No. 1-J—(Continued)

and commerce among the several States of the United States, and have led to and tend to lead to labor disputes burdening and obstructing interstate commerce and the free flow thereof.

XVIII.

The aforesaid acts of the Respondent constitute unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (2), (3) and (5), and Section 2, subsections (6) and (7) of the Act.

Wherefore, the National Labor Relations Board on this 24th day of June, 1942, issues its Consolidated Complaint against Idaho Refining Company, the Respondent herein.

[Seal] ELYWN J. EAGEN,
Acting Regional Director, National Labor Relations
Board, Nineteenth Region, 812 Vance Building,
Seattle, Washington.

BOARD'S EXHIBIT NO. 1-K

[Title of Board and Causes.]

CONSOLIDATED NOTICE OF HEARING

Please Take Notice that on the 13th day of July, 1942, at ten o'clock in the forenoon, in a court room in the Bannock County Court House, Pocatello, Idaho, a hearing will be conducted before a duly designated Trial Examiner of the National Labor

Relations Board on the allegations set forth in the Consolidated Complaint attached hereto, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

A copy of the Amended Charge and Charge upon which the Consolidated Complaint is based are attached hereto.

You are further notified that you have the right to file with the Acting Regional Director for the Nineteenth Region, with offices at 812 Vance Building, Seattle, Washington, acting in this matter as agent of the National Labor Relations Board, an answer to said Consolidated Complaint within ten (10) days from the service thereof.

Please Take Notice that duplicates of all exhibits which are offered in evidence will be required unless, pursuant to request or motion, the Trial Examiner in the exercise of his discretion and for good cause shown, directs that a given exhibit need not be duplicated.

In Witness Whereof the National Labor Relations Board has caused this, its Consolidated Complaint and Consolidated Notice of Hearing, to be signed by the Acting Regional Director for the Nineteenth Region on this 24th day of June, 1942.

[Seal]

ELYWN J. EAGEN,

Acting Regional Director,
National Labor Relations
Board.

BOARD'S EXHIBIT NO. 1-I

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

State of Washington

County of King—ss:

I, Maude Sipple being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 19th Region at Seattle, Washington; on the 24th day of June, 1942, I served by postpaid registered mail, bearing Government frank, a copy of Consolidated Complaint, Consolidated Notice of Hearing, Amended Charge and Charge to the following named persons, addressed to them at the following addresses:

Idaho Refining Company

Pocatello, Idaho (Included copy of Rules and Regulations) Registry No. 243050

Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, AFL, 140 S. 1st Avenue, Pocatello, Idaho. Attention: Lee W. Owen, Secretary-Treasurer Registry No. 243051

International Association of Machinists, Local No. 198, AFL, 316 N. 9th Avenue, Pocatello, Idaho. Attention: Zenos F. George, Recording Secretary Registry No. 243052

Idaho Refining Company Employees' Benefit and Labor Association, c/o Idaho Refining Company, Pocatello, Idaho. Attention: Delmar R. Peters, President Registry No. 243053

MAUDE SIPPLE,

Assistant Clerk-Stenographer.

Subscribed and sworn to before me this 25th day of June 1942.

BETTY C. STEELE,
Designated Agent.

(Return Card Receipts for above Registered Mail Attached.)

BOARD'S EXHIBIT NO. 1-H

[Title of Board and Causes.]

MOTION TO CONTINUE HEARING

Comes Now the respondent and moves this Board that the hearing of the above entitled consolidated cases which has been set for July 13, 1942 be continued until July 29, or thereafter at the convenience of the Board. This motion is made for the reason that Henry D. Moyle, one of the attorneys for the respondent, and its vice-president, participated in many of the events upon which many of the charges in the complaint are based, and it is necessary for a full hearing of the facts that the said Mr. Moyle be present at the hearing. The said Henry D. Moyle is chairman of a Petroleum Industry Committee, District 4, appointed by Petroleum Coordinator for War, and has been called to Washington, D. C. by the Petroleum Coordinator for meetings to be held July 13 and following.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Residing at Salt Lake City,
Utah.

MERRILL & MERRILL,
Residing at Pocatello, Idaho,
Attorneys for respondent.

BOARD'S EXHIBIT NO. 1-G

[Title of Board and Causes.]

MOTION FOR EXTENSION OF TIME IN
WHICH TO FILE ANSWER

Comes Now the respondent and moves this Board for an extension of time until July 11, 1942 in which to file its answer to the consolidated complaint herein.

This motion is made upon the ground that some of the former employees, who it is alleged in the complaint made certain representations, have been and now are out of the States of Utah and Idaho and have not been available for questioning by the respondent.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Residing in Salt Lake City,
Utah.

MERRILL & MERRILL,
Residing in Pocatello, Idaho,
Attorneys for Respondent.

BOARD'S EXHIBIT NO. 1-F

[Title of Board and Causes.]

MOTION TO MAKE MORE SPECIFIC

Comes now the respondent and moves that it be advised of the following:

1. The name of the "employee" referred to in paragraph V-1.
2. The name of the "employee" referred to in paragraph V-2.
3. The name of the "employee" referred to in paragraph V-3.
4. The name of the "truck driver" referred to in paragraph V-4.
5. The name of the "employee" referred to in paragraph V-5.
6. The names of the "persons" referred to in paragraph V-6.
7. The names of the "truck drivers" referred to in paragraph V-7.
8. The names of "certain employees" referred to in paragraph V-8.

The paragraphs herein referred to are the paragraphs so numbered in the Consolidated Complaint.

This motion is made upon the ground that respondent can not fully investigate the facts and prepare the case for its information and for trial without the clarification of the complaint herein requested.

Dated this 6th day of July, 1942.

MOYLE, RICHARDS & McKAY,
Salt Lake City, Utah.

MERRILL & MERRILL,
Pocatello, Idaho.

Attorneys for Respondent.

BOARD'S EXHIBIT NO. 1-E

[Title of Board and Causes.]

ORDER POSTPONING HEARING AND
DESIGNATING PLACE OF HEARING

It Is Hereby Ordered that the hearing in the above entitled matters scheduled to begin at ten o'clock in the forenoon on the 13th day of July, in a court room in the Bannock County Court House, Pocatello, Idaho be, and the same hereby is postponed to the 3rd day of August, 1942, and the place of hearing is changed to the Grand Jury Room, United States Post Office Building, Pocatello, Idaho.

Dated this 9th day of July, 1942.

[Seal]

THOMAS P. GRAHAM, JR.,
Regional Director, Nineteenth
Region.

BOARD'S EXHIBIT NO. 1-D

[Title of Board and Causes.]

ORDER FOR EXTENSION OF TIME IN
WHICH TO FILE ANSWER

It Is Hereby Ordered that the time for filing answer to the Consolidated Complaint in the above entitled matters, is extended to July 11, 1942.

Dated this 9th day of July, 1942.

[Seal]

THOMAS P. GRAHAM, JR.,
Regional Director, Nineteenth
Region.

BOARD'S EXHIBIT NO. 1-C

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

State of Washington

County of King—ss:

I, Maude Sipple being duly sworn, depose and say that I am an employee of the National Labor Relations Board, in the 19th Region at Seattle, Washington; on the 9th day of July, 1942, I served by postpaid registered mail, bearing Government frank, a copy of Order Postponing Hearing and Designating Place of Hearing Order for Extension of Time in Which to File Answer to the following named persons, addressed to them at the following addresses:

1. Idaho Refining Company
Pocatello, Idaho Registry No. 243081
2. Teamsters, Chauffeurs, Warehousemen and
Helpers, Local No. 983, AFL, 140 S. 1st Avenue,
Pocatello, Idaho. Attention: Lee W. Owen,
Secretary-Treasurer Registry No. 243082
3. International Association of Machinists, Local
No. 198, AFL, 316 N. 9th Avenue, Pocatello,
Idaho. Attention: Zenos F. George, Recording
Secretary Registry No. 243083
4. Idaho Refining Company Employees' Benefit and
Labor Association, c/o Idaho Refining Company,
Pocatello, Idaho. Attention: Delmar R. Peters,
President Registry No. 243084

MAUDE SIPPLE,
Assistant Clerk-Stenographer.

Subscribed and sworn to before me this 9th day of
July 1942.

BETTY C. STEELE,
Designated Agent.

(Return Card Receipts for above Registered Mail
attached.)

BOARD'S EXHIBIT No. 1-B

[Title of Board and Causes.]

CONSOLIDATED ANSWER TO
CONSOLIDATED COMPLAINT

Comes now the Idaho Refining Company, here-
inafter called respondent and for answer to the

Board's Exhibit No. 1-B—(Continued)
consolidated complaint on file herein admits, denies
and alleges, as follows:

I.

Respondent admits the allegations contained in
paragraph numbered I of said complaint.

II.

Respondent admits the allegations contained in
paragraph numbered II of said complaint.

III.

Answering paragraph numbered III of said com-
plaint, respondent denies that it sells and distrib-
utes the greater portion of the products distrib-
uted and sold by it through Idaho Gas & Oil
Company and Covey Gas and Oil Company of Ida-
ho, alleging in this particular that it sells and dis-
tributes less than one-half of its products through
said companies.

Respondent denies that the Idaho Gas and Oil
Company is owned and controlled by respondent,
alleging in this respect that the respondent owns
no stock in the said Idaho Gas & Oil Company,
but that said stock is owned by individual stock-
holders. Respondent admits that it owns and con-
trols the Covey Gas and Oil Company of Idaho.

IV.

Answering paragraph numbered IV of said com-
plaint the respondent is without knowledge of the
allegations therein contained save and except it

Board's Exhibit No. 1-B—(Continued)

admits Idaho Refining Company Employees' Benefit and Labor Association is now, and for several years last past has been a labor organization within the meaning of Section 2, subsection (5) of the act.

V.

Answering paragraph numbered V of said complaint the respondent denies that since before March 1940, or at any other time, or at all, it has on various or any occasion interfered with, restrained and/or coerced its employees in the exercise of their rights to organize and to bargain collectively through representatives of their own choosing, and denies that it has attempted to discourage the membership of its employees in Machinists Local 198, Teamsters Locals 440 and 983, or any other bona fide labor organization, and denies that it has encouraged membership of its employees in the association referred to in said complaint.

Respondent answers the numbered allegations of said paragraph as follows:

1. Respondent denies that on or about March 1940 by and through Kermit Rice, its truck foreman, or anyone else, it inquired of an employee hired as a truck driver whether he belonged to the Teamsters Union or any labor union, and denies that it informed him that the manager of the company was opposed to unions and membership of employees in labor unions.

Board's Exhibit No. 1-B—(Continued)

2. Respondent denies that in the month of August or September 1941, or at any other time through its local manager Gilbert Moyle and its Secretary Frank Copenig, or either of them, or at all, it advised an employee of Idaho Gas & Oil Company at Mackay, Idaho, that respondent would not hire or retain in its employment truck drivers who belonged to the Teamsters Union.

3. Respondent denies that in about the month of October, 1941, or at any other time, through its manager Gilbert Moyle or any other person, it advised an employee of the respondent at Boise, Idaho, that if the truck drivers employed by the respondent joined the Teamsters Union, the respondent would discharge all of its truck drivers.

4. Respondent denies that on November 13, 1941, or at any other time by and through Kermit Rice, or any other person, it inquired of a truck driver employed by the respondent whether he belonged to Teamsters Local 440, and whether the other truck drivers employed by the Company belonged to said local.

5. Respondent denies that on or about November 16, 1941, or at any time by and through W. A. Sheppard, District Manager of Idaho Gas & Oil Company, at Boise, Idaho, or anyone else, it attempted to induce an employee of Idaho Gas & Oil Company to report to the respondent whether truck drivers employed by Idaho Gas & Oil Company at Boise, Idaho, were members of a Teamsters Union, and/or advised said employee that employees who

Board's Exhibit No. 1-B—(Continued)

joined or belonged to said union would be dismissed.

6. Respondent denies that since November 14, 1941, or any other date, by and through Kermit Rice, C. E. Henninger, Gilbert Moyle, Frank Copening, or any of them, or anyone else, it has inquired of persons applying for employment as truck drivers, and/or of employees hired as truck drivers, whether they belonged or had belonged to the Teamsters Union, or any outside labor organization and denies that they or any one advised such employees that the company was opposed to membership of employees in such unions; respondent states that when any prospective employee applied for employment he was asked only such questions as would enable respondent to determine his fitness for the position desired and such general questions as to his affiliation with social, lodge or church organizations. Respondent alleges that it has never refused employment to any person by reason of his membership in, or affiliation with any labor organization.

7. Respondent denies that in November and December 1941, or at any other time, by and through Kermit Rice, C. E. Henninger or anyone else, it instructed truck drivers employed by respondent to present any grievance they had directly to the management and not through Teamsters Local 440, or any outside organization or representatives, and denies that it indicated to said employees that the truck drivers employed by the

Board's Exhibit No. 1-B—(Continued)

Company prior to November 14 had been discharged because they had sought to be represented by Teamsters Local 440.

8. Respondent admits that about January, 1942, certain employees employed as truck drivers were transferred from Baker, Oregon to Pocatello, Idaho, but deny that the respondent by and through the agency of R. E. Stiff or anyone else instructed the said employees that they should not engage in any union activities while employed at Pocatello, or discuss working conditions with other drivers employed by respondent. Respondent further alleges that if the said R. E. Stiff made any such comment as alleged in said paragraph respondent is not accountable therefor; that such comment, if made, was without the scope of his agency, was beyond the knowledge of respondent, and was not at its instance or suggestion.

VI.

Respondent admits that on or about the 14th day of November, 1941, it discharged certain employees, namely James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Henriksen, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger, and Myron Whitesides; respondent denies that it discharged Wayne Douglas at said time, alleging in this particular that the said Wayne Douglas was discharged in

Board's Exhibit No. 1-B—(Continued)

September, 1941, because of his having disregarded specific instructions in the driving of a truck and wrecked said truck. Respondent admits that it has not reemployed all of said above named persons as truck drivers, admits that it has employed R. E. Miller, and alleges that it has since said time also employed K. C. Brower, who remained in its employ until he accepted employment in a defense plant, and that it has also employed Myron D. Whitesides who remained in its employ until he left it voluntarily on July 1st, 1942. Respondent further alleges that it has offered employment to S. R. Burkholder, Edward Boyd Cornia and John Evans, but for various reasons they declined to be further employed. Respondent denies that said employees were discharged and have been refused reinstatement or re-employment as truck drivers because of their membership in, or activity on behalf of Teamsters Local 440, and denies that said discharge was in order to discourage membership in said Teamsters Local 440, and to avoid respondent's obligation to bargain with said Teamsters Local 440. In this respect respondent alleges that the discharge of said employees was necessary for the preservation of the business of delivering petroleum products by the respondent, more particularly as follows:

That said employees had, over the protest of respondent, repeatedly engaged in habits not conducive to efficient and proper business practices and had repeatedly abused the equipment of the

Board's Exhibit No. 1-B—(Continued)

respondent and subjected it to such loss and hazard that the respondent's insurance carrier refused to carry further said insurance because of serious financial losses the said carrier had suffered in consequence of the driving habits of the said employees. That on November 10th, 1941, the said carrier served notice on the respondent that respondent's insurance would be cancelled on November 17th.

That the said carrier did so cancel respondent's insurance because of the said driving records. That respondent could not haul its products under Interstate Commerce Commission rules without insurance. That a showing of an employment of a new force of drivers was necessary to obtain the granting of a new policy of insurance to the respondent.

VII.

Respondent admits that on or about the 14th day of November, 1941, it discharged Leo Archibald from its employ and that it has failed and refused to reinstate and reemploy him, but denies that such was because of his membership in, or activities on, behalf of Machinists Local 198, or his activities on behalf of Teamsters Local 440.

Respondent alleges in this particular that Leo Archibald was discharged because of drunkenness, and of the habit of drinking which he had acquired, rendering his employment unsafe to the respondent.

Board's Exhibit No. 1-B—(Continued)

VIII.

Respondent denies that the employees employed as truck drivers, excluding the foreman, constituted at any time a unit appropriate for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment or other conditions of employment within meaning of Section 9, subsection (b) of the Act.

IX.

Respondent is without knowledge as to whether Teamsters Local 440 and Teamsters Local 983 successively have been designated or selected by a majority of the employees of respondent in any unit as their representative for the purpose of collective bargaining with respondent, and denies that they are the exclusive representative of any employees for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

X.

Respondent admits that it refused to bargain with Teamsters Local 440 and Teamsters Local 983, alleging in this particular that on or about the dates mentioned in said paragraph certain individuals whom respondent is now advised were representing said locals approached respondent but refused to give any evidence of any right to represent said employees or any of them, though requested to do so by respondent, and respondent al-

Board's Exhibit No. 1-B—(Continued)

leges that said individuals have never had the right to represent the employees of respondent.

Respondent further alleges in this particular that its said employees had theretofore legally and properly organized the association referred to in said complaint and that the respondent was under written contract with said association, and that the discharged employees hereinbefore listed were members of the said association at the time of their discharge.

XI.

Answering paragraph number XI of said complaint respondent denies that on or about July or August 1937 it dominated or interfered with the formation of the Association referred to in said complaint.

Respondent answers the specific allegations contained in paragraph No. XI, as follows:

1. Respondent denies that its supervisory or confidential employees, and particularly Gilbert Moyle as General Manager initiated, suggested, advocated or approved the organization of the Association. Respondent has no knowledge that George Hibbler was active in the organization of the said association, and alleges that if the said George Hibbler was so active, such activity was done on his own behalf as an employee and was not done on respondent's behalf, nor at respondent's suggestion or approval. Respondent further denies that the said George Hibbler ever took part in the organizing of said association, or acted there-

Board's Exhibit No. 1-B—(Continued)

in, while holding any supervisory or confidential position with the respondent.

2. Respondent admits that meetings of said employees have been held on the premises of the respondent, but allege that rental has been charged them therefor. In this respect respondent further alleges that there is no other place conveniently located where said employees could meet, and that it has freely offered said premises for other organizations and labor unions without rent or restriction, and that other unions have requested the use of the said premises, and have so used them.

3. Respondent further denies that its officers or supervisory or confidential employees attended and participated in the meetings described in paragraph XI (3) of the consolidated complaint, or in any other meetings alleged in the complaint.

XII.

Answering paragraph numbered XII of said complaint, respondent denies that it has ever dominated or interfered with the administration of said association and denies that it has furnished financial or other assistance to the association.

Respondent answers the particular allegation of said paragraph as follows:

1. Respondent denies that its officers, supervisory employees or confidential employees participated in or influenced the adoption of the by-laws of the association which govern and regulate its administration.

Board's Exhibit No. 1-B—(Continued)

2. Respondent denies that its officials, supervisory employees or confidential employees have been or are now members of said association or that they have attended meetings and contributed financial support to said association in the form of dues and assessments, or otherwise, and denies that it has participated in and influenced the conduct of the affairs of the association.

3. Respondent is without information as to what part C. E. Henninger, Earl Porter, F. W. Carlson and George Farnsworth took in said association, or what offices they held, but denies that they or any of them ever acted therein while holding any supervisory or confidential position with the respondent.

4. Respondent admits that it has permitted the association to hold meetings of its members, board of directors and committees on the premises of the company, but alleges that it has charged the association rental therefor. It alleges in this particular, however, that the use of the premises without charge has been extended to and accepted by other labor organizations. Respondent further alleges that other unions have repeatedly demanded and obtained the use of the said premises without charge for the purpose of holding elections among the members, and respondent is informed and therefore alleges that at each election the employees of respondent have voluntarily and without suggestion from respondent overwhelmingly voted against the said other unions.

Board's Exhibit No. 1-B—(Continued)

5. Respondent denies that it has donated the services of stenographic employees to said association.

6. Respondent denies that it has granted to members of the association as such, a discount or reduction in the purchase of gasoline, oil or other products purchased by members of the association from the Covey Gas & Oil Company of Idaho or from any one else; respondent alleges in this particular that such discounts and reductions as have been given have been given to all employees, irrespective of membership in said association or any other association.

7. Respondent denies that in June, 1941, by and through Gilbert Moyle it caused a meeting of the members of the association to be held in order to discourage and defeat concerted activities of employees acting independently of said association and denies that it dominated and interfered with the conduct of the said meeting.

8. Respondent denies that in June, 1941, the said Gilbert Moyle caused a purported collective bargaining agreement to be entered into between respondent and the association, and denies that he dictated and prescribed the terms and provisions of said agreement, alleging in this respect that said agreement was an independent act of the said association and was drawn by the attorney chosen by the association.

9. Respondent denies that by reason of any opposition to outside labor organizations (which op-

Wherefore Respondent Prays that no adverse finding be made against it in this matter, but that said consolidated complaint be dismissed.

IDAHO REFINING COMPANY

By HENRY D. MOYLE

Vice President

Pocatello, Idaho

Subscribed and sworn to before me this 9th day of July, 1942.

[Seal]

MILLICENT D. CORNWALL

Notary Public, residing at
Salt Lake City, Utah

MOYLE, RICHARDS and McKAY

720 Newhouse Building,
Salt Lake City, Utah

MERRILL & MERRILL

504 Carlson Building,
Pocatello, Idaho

Attorneys for respondent.

United States of America
Before the National Labor Relations Board

Case No. C-2380

In the Matter of
IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS, LOCAL No. 983,
A.F.L.

Case No. C-2381

In the Matter of
IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, LOCAL No. 198, affiliated with
the A.F.L.

Mr. Louis S. Penfield and Mr. Gerald P. Leicht,
for the Board.

Mr. Henry D. Moyle and Mr. David L. McKay, of
Salt Lake City, Utah, and Mr. A. L. Merrill,
of Pocatello, Idaho, for the respondent.

Mr. Delmar R. Peters, of Pocatello, Idaho, for
the Association.

Mr. Herman J. De Koven, of counsel to the Board.

DECISION AND ORDER

Upon a complaint issued pursuant to charges filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., herein called the Union, and by International Association of Machinists, Local No. 198, A. F. of L., against Idaho Refining Company, Pocatello, Idaho, herein called the respondent, a hearing was held before a Trial Examiner in Pocatello, Idaho, from August 3 to 13, 1942, in which the Board, the respondent, and Idaho Refining Company Employees' Benefit and Labor Association, herein called the Association, participated by their representatives. The Board has reviewed the Trial Examiner's rulings on motions and on objections to the admission of evidence and finds that no prejudicial error was committed. The rulings are hereby affirmed.

On October 20, 1942, the Trial Examiner issued his Intermediate Report, attached hereto, in which he found that the respondent had engaged in unfair labor practices. Thereafter, the respondent filed exceptions to the Intermediate Report and a brief in support of its exceptions. Oral argument was held before the Board at Washington, D. C., on January 7, 1943.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, except insofar as they are inconsistent with our decision and order hereinafter set forth.

1. We agree with the Trial Examiner's conclu-

sion that the truck drivers at Pocatello were discriminatorily discharged.¹

That the underlying reason for the discharges as not the cancelation of the insurance, as alleged by the respondent, is evidenced in part by the fact that approximately half of the discharged drivers had never had an accident and therefore did not contribute to the loss ratio or accident frequency. In explanation of its action, the respondent contends that it did not have the accident records of the individual drivers, that it did not have adequate time in which to effect a segregation of those who had never had an accident, and that the discharge of all the drivers was necessary in order to obtain new insurance. We find these contentions to be without merit. The record discloses that the accident records of the individual drivers were available both at Salt Lake City, where the respondent contends the decision to discharge was made, and at Pocatello, where we find, as did the Trial Examiner, the decision was made. Moreover, the accident records of the individual drivers could have been readily secured by the respondent from the Insurance Company and adjusters' bureaus. Nor do we credit the respondent's contention that it did not have ample time in which to effect a segregation.

¹We do not agree with the subsidiary finding of the Trial Examiner that Gilbert Moyle told Evans, one of the drivers, on November 14 that he had been ordered discharged by the Insurance Company.

As for the respondent's assertion that it had to discharge all the drivers in order to obtain new insurance, it is clear that prior to the discharge no insurance company or agent required that the respondent discharge any of the drivers as a condition to the issuance of a policy. The respondent contends, however, and Henry Moyle so testified, that Gilbert Sheets and Henry Moyle, who were familiar with the operations of insurance companies, believed that no insurance company would issue a policy unless the respondent discharged all the drivers. In support of this contention, the respondent points to a letter dated November 24, 1941, to the respondent from Sweeney, an insurance broker other than the one who obtained the new insurance, in which a quotation for new insurance was submitted on the understanding that the respondent had discharged all drivers in its employ. There is also the testimony of Henry Moyle that on November 17, 1941, Watkins, the insurance broker through whom the respondent obtained the new insurance, and Sweeney, both told him that if the drivers had not been discharged they would not have considered issuing a policy to the respondent. The foregoing is not persuasive, however, in view of the fact that Benson, Sweeney's principal, who was responsible for the letter of November 24, and Watkins, were merely advised that the respondent had discharged the drivers and were not told that some of them had never had an accident. They had heard that the respondent had a high loss ratio and that the accidents were

generally due to careless driving. With such information at hand, and in the absence of knowledge that approximately half of the drivers had never had an accident, it would seem reasonable for them to have regarded all the drivers, as a unit, as responsible for the high loss ratio. It is unlikely that any insurance company would have required the respondent to discharge drivers with perfect records and hire new ones whose ability in handling the respondent's equipment had not been tested. On the contrary, it would seem that the incentive to an insurance company's issuance of a policy would have been greater if the respondent had discharged only those drivers with accident records. This conclusion is substantiated by Benson's admission that if he knew that one or more drivers were responsible for a company's high loss ratio, he would either refuse to write insurance for that company at all or demand that the particular drivers be removed.

That the cancelation of the insurance was not the motivating cause of the discharges is further evidenced by the respondent's failure to take any action with regard to drivers operating outside of Pocatello who had had accidents which contributed to the high loss ratio and accident frequency.²

²The respondent contends that some of the drivers who operated outside of Pocatello were lessees or independent contractors. The record discloses, however, that some of those who drove the trucks of the respondent, or of Covey or Idaho, outside of Pocatello, were clearly employees, and among them were two who had had accidents on which

The respondent contends that it confined the discharges to the Pocatello drivers because they were the principal offenders. However, the record discloses that 4 of the drivers operating outside of Pocatello had had serious accidents and 3 had had minor ones. This is to be compared with the 5 Pocatello drivers who had had serious accidents and the 3 who had had minor ones. Moreover, of the 12 drivers who had had accidents on which the Insurance Company is shown to have suffered a loss, 7 were not Pocatello drivers. Although 3 of these 7 had had minor accidents on which insubstantial sums were paid by the Insurance Company, cancellation of the respondent's insurance, according to the agent who handled the canceled policy, was effected not only because of the amount of the losses but also because of the number of accidents, and Gilbert Sheets admitted that he knew that insurance companies were concerned about accident frequency as well as loss ratio.

That the union membership and activities of the Pocatello drivers were the underlying cause of their discharge is evidenced not only by the inadequacy of the reason assigned by the respondent for the discharge, and the respondent's general hostility

the Insurance Company had paid substantial sums. Moreover, the respondent did not establish that it was without power to prevent those who may have been lessees or independent contractors from continuing to drive the equipment which was covered by the insurance policy and in which the respondent had some interest.

toward outside unions,³ but also by the statements and activities, properly found by the Trial Examiner, of Manager Gilbert Moyle, Foreman Sheppard, Copenig, secretary of the respondent, and Foremen Henninger, Stiff, and Rice. Such statements and activities clearly indicate that the respondent was opposed to the unionization of the Pocatello drivers and that their union membership and activities were the motivating cause of their discharge.⁴

2. We agree with the Trial Examiner's conclusion that Leo Archibald was discriminatorily discharged. Except with respect to a few minor derelictions which had occurred some time prior to the discharge, Archibald, whom we find to be a trustworthy witness, denied the testimony of the

³The respondent's hostility toward outside unions is clearly manifested by the conduct of its officials and supervisory employees, as properly found by the Trial Examiner, in interrogating employees as to union membership, instructing them not to engage in union activity, threatening to discharge them because of their union membership, declaring that the Union could be of no benefit to the employees and that the respondent was opposed to outside unions, and expressing a preference for the Association, as well as the respondent's domination and support of the Association.

⁴One of the drivers (K. C. Brower) had not joined the Union. However, we agree with the Trial Examiner that because of Brower's association and employment with the other drivers, the respondent concluded that he too was a union member and discharged him in furtherance of its effort to destroy the Union.

respondent's witnesses, whom we find to be incredible, regarding the derelictions with which Archibald is charged. We are convinced that the few minor derelictions which were admitted by Archibald were not the motivating cause of his discharge. Nor do we believe that Archibald's illness on a few occasions, or his absences, during his 10 months of employment, were responsible for his discharge. Also, we credit Archibald's denial of the testimony of the witnesses for the respondent that Archibald had been threatened with discharge on various occasions.

We believe it significant that Archibald, who was active in organizing the truck drivers at Pocatello,⁵ was discharged on November 14, the same day that the drivers were discriminatorily discharged. The respondent, in an effort to demonstrate that Archibald's discharge was in no way connected with that of the drivers, attempted to prove that the decision to discharge Archibald was made some time prior to November 14 and not later than November 10, the date of his last alleged dereliction. That this position is untenable is demonstrated not only by the inconsistency in the testimony of the respondent's own witnesses as to when the decision to discharge Archibald was made, but also by the absence of a clear and consistent ex-

⁵In addition to the evidence set forth in the Intermediate Report in support of the conclusion that the respondent had knowledge of Archibald's union activities, we note and find that many of his activities on behalf of the Union were carried on at the plant.

planation by the respondent as to why Archibald was discharged on November 14 rather than at any other time. Foreman Rice, in his testimony, assigned different reasons for not discharging Archibald on November 10, when, according to Rice, the decision to discharge him was made. He first testified that he had to wait until "we caught up on our work" and stated that on November 14 the work was "caught up with."⁶ However, Subforeman Brown, as well as Rice himself, admitted that at the time of Archibald's discharge the mechanics were as busy as ever. Later in his testimony, the reason given by Rice for not discharging Archibald on November 10 was that he had to wait until he found another mechanic. The record discloses, however, that mechanics were available for employment between November 10 and 14, and that, in any event, another mechanic to replace Archibald was not hired until November 20, 6 days after Archibald's discharge.

3. We agree with the Trial Examiner's conclusion that Wayne Douglas' discharge was discriminatory. That the motivating cause of his discharge was not his accident at Weiser on October 16, as the respondent alleges, is amply supported by the record. Douglas was not discharged until 5 weeks after the accident, and the respondent has not satisfactorily explained the reason for the de-

⁶We do not concur in the statement of the Trial Examiner that "it may be true that by November 13 Archibald had completed a specific work assignment."

lay in discharging him. Also, when Douglas was first notified of his discharge,⁷ no reason was given him for such action and he was told not to ask any questions. Further, when Douglas inquired of Gilbert Moyle and Copening a day or two after his discharge as to the reason therefor, he was told that it was because of the cancelation of the insurance, and no mention was made of the Weiser accident.⁸

In support of its contention that Douglas was not discharged because of his union membership, the respondent points to the fact that five other drivers who were employed with Douglas at Baker, Oregon, were union members, having joined a local of the Teamsters Union other than Local 440, and were not discharged. We do not believe that this circumstance negates a discriminatory motive in the discharge of Douglas. The bulk of the respondent's drivers were employed at Pocatello, and the evidence clearly establishes that the respondent was perturbed over the unionization of the

⁷This was on November 20, when Mrs. Stiff instructed Douglas "not to pull any more trips, and not to ask any questions." The record discloses that Mrs. Stiff served as secretary to Mr. Stiff, who we find was a foreman acting on behalf of the respondent, and we infer from the entire record that what Mrs. Stiff told Douglas on November 20 was pursuant to the instructions of Foreman Stiff or some other representative of the respondent.

⁸This finding is based upon the testimony of Douglas, whom we find to be a credible witness. We do not credit Gilbert Moyle's and Copening's denial of Douglas' testimony.

Pocatello drivers. We find that Douglas' discharge was motivated by the fact that while working at Pocatello, he had joined Local 440 of the Teamsters Union during its organizational drive and that, so far as his union membership is concerned, he was identified by the respondent with the Pocatello group even though he returned to Baker, Oregon, in the early part of October 1941.

4. We do not agree with the Trial Examiner's findings and conclusion that the respondent refused to bargain collectively with the Union in violation of the Act. We are not satisfied that at the conference of November 21 between the respondent and the Union, the latter purported to represent truck drivers alone. Under these circumstances, we are not convinced that the respondent's request for proof that the Union represented a majority was not made in good faith. Since the respondent's refusal to bargain is predicated on the Union's failure to furnish such proof, we find that under the circumstances presented herein, there has been no violation of Section 8 (5) of the Act.⁹

⁹In finding that there has been no refusal to bargain in this case, we note that the decision to discharge the drivers was made prior to the Union's request for recognition and collective bargaining. We do not agree with the finding of the Trial Examiner that James Ayers told Foreman Rice on November 13 that the drivers were going to present a contract. The record establishes that Ayers told Rice that the drivers wanted a certain wage, but it is not clear from Ayers' testimony that he informed Rice that their demands were being incorporated in a contract which the drivers or the Union were planning to submit to the respondent.

We shall accordingly dismiss the complaint insofar as it alleges that there has been such a violation.¹⁰

The Remedy

We have found that the respondent discriminated in regard to the hire and tenure of employment of the employees listed in Appendix A, attached hereto, and of R. E. Miller, one of the discharged Pocatello drivers. We turn now to a consideration of their reinstatement and back pay.

We agree with the conclusion of the Trial Examiner that the respondent's offers of employment on the loading dock to some of the discharged drivers were not offers of substantially equivalent employment. The nature of the work and the skill required, as well as the earnings,¹¹ were substantially different in the two types of employment.¹² We also find, in view of the differences in the na-

¹⁰We accordingly find it unnecessary to determine the appropriate bargaining unit.

¹¹We do not agree with the finding of the Trial Examiner that their earnings on the loading dock would have been approximately the same as their earnings as drivers. Since, according to the testimony of Foreman Henninger, they would have averaged 14 hours overtime on the loading dock, their earnings in such capacity would have been substantially less than their earnings as drivers.

¹²In finding that the offers of work on the loading dock were not offers of substantially equivalent employment, we do not rely, as did the Trial Examiner, on the fact that nothing was said to the individuals in question about the restoration of any of their previous privileges.

ture of the work and the skill required, that Myron D. Whitesides' employment in the respondent's warehouse subsequent to his discharge was not substantially equivalent to employment as a truck driver.

The respondent contends that Guy Campbell, Howard Davis, John Ray, and Leland Stanford, who were extra-board drivers, would in any event have been discharged because of the decrease in the number of drivers required by the respondent during the winter season, and that therefore such drivers should not be reinstated. Foreman Rice testified that on October 15, 1941, he advised these four drivers that there would not be sufficient work for them during the winter and that they should therefore seek other employment. We find this contention to be without merit. The record discloses that during the winter the respondent hired drivers to replace all the discharged drivers, including the four in question.¹³

The respondent also contends that those discharged drivers listed in Appendix A whose acci-

¹³Thus, a list of the respondent's truck drivers employed between November 14, 1941, and March 28, 1942, which was admitted in evidence, discloses that 17 new drivers were hired between November 14 and 18, 1941, to replace the 18 who had been discharged; that the employment of 2 of these was terminated by November 27, 1941; that 5 additional drivers were employed between December 1 and 23, 1941; and that between November 14, 1941, and March 28, 1942, the respondent had an average of 19 drivers in its employ.

dents were caused by their carelessness should not be reinstated. We have found that the union membership and activities of the Pocatello drivers, as well as of Douglas, were the underlying cause of their discharge. Under such circumstances, in order to effectuate the purposes and policies of the Act, we would normally require the respondent to reinstate each of them and make each whole for any loss of pay he may have suffered by reason of the discrimination. However, some of these drivers, namely, Boyd Cornia, Wayne Douglas, Henry Henricksen, A. Stanley Merrill, and Myron D. Whitesides, had been involved in serious accidents. We do not believe it would effectuate the policies of the Act to apply our usual remedy to these five employees. Accordingly, we shall order the reinstatement, with back pay, of all the drivers listed in Appendix A, except the five individuals mentioned above.¹⁴

Since R. E. Miller has been reemployed by the respondent as a truck driver, we shall not order

¹⁴The record indicates that some of the individuals listed in Appendix A whom we shall order reinstated may have obtained regular and substantially equivalent employment elsewhere since their discharge by the respondent. We find that it will effectuate the policies of the Act to require the respondent to offer reinstatement to such persons whether or not they, or any of them, have obtained other regular and substantially equivalent employment. See *Matter of Ford Motor Company and International Union, United Automobile Workers of America, Local Union No. 249*, 31 N.L.R.B. 994, 1100.

his reinstatement; however, in order to effectuate the purposes and policies of the Act, we shall order the respondent to make him whole for any loss of pay he may have suffered by reason of his discriminatory discharge on November 14, 1941, by payment to him of a sum of money equal to the amount he normally would have earned as wages from the date of the discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period.

ORDER

Upon the entire record in the case, and pursuant to Section 10 (e) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Idaho Refining Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Idaho Refining Company Employees' Benefit and Labor Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to said labor organization or any other labor organization of its employees;

(b) Recognizing or in any manner dealing with Idaho Refining Company Employees' Benefit and

Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Performing or giving effect to the contract of June 1, 1942, with Idaho Refining Company Employee's Benefit and Labor Association, or to any amendment, extension, or renewal thereof, or to any other contract, agreement or understanding entered into with said Association relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(d) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, or International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of

collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(b) Offer to the employees listed in Appendix A, except Boyd Cornia, Wayne Douglas, Henry Henriksen, A. Stanley Merrill, and Myron D. Whitesides, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole each of the employees ordered reinstated in paragraph 2 (b) of this Order for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings during such period;

(d) Make whole R. E. Miller for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period;

(e) Post immediately in conspicuous places at its plant at Pocatello, Idaho, and at the premises occupied or used by the respondent at Baker, Oregon and Boise, Idaho, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), (d), and (e) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c) and (d) of this Order; and (3) that the respondent's employees are free to remain or become members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(f) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from

the date of this Order what steps the respondent has taken to comply herewith.

It Is Hereby Further Ordered that the complaint be, and it hereby is, dismissed insofar as it alleges that the respondent has refused to bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, and its successor, Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, both affiliated with the American Federation of Labor.

Signed at Washington, D. C., this 25th day of February 1943.

HARRY A. MILLIS

Chairman

WM. M. LEISERSON

Member

[Seal]

National Labor Relations
Board

Appendix A

Leo Archibald

James Ayers

K. C. Brower

S. R. Burkholder

Guy Campbell

Boyd Cornia

Howard Davis

Wayne Douglas

Victor Ellingford

John Evans

Leonard Fowler

Arthur Heckert

Henry Henriksen

Carl Hill

A. Stanley Merrill

John Ray

Leland Stanford

P. P. Stanger

Myron D. Whitesides

Gerard D. Reilly, dissenting in part:

I am compelled to dissent from the view adopted by the majority, that the drivers at Pocatello, who had been engaged in accidents resulting in claims which the insurance company had been called upon to bear, were discharged in violation of Section 8 (3) of the Act. The sole basis for the Board's finding that the discharge of all the Pocatello drivers was discriminatory is the fact that the respondent could not have reasonably believed that any insurance company would have required it to discharge drivers who had perfect driving records in order to obtain new insurance. But in resolving the issue of whether the respondent was motivated in discharging the drivers by the absolute necessity of obtaining new insurance or by a desire to rid itself of union drivers, I think it is fallacious to assume that because the realities of the insurance situation did not require the discharge of drivers with flawless records, that it therefore likewise did not require the discharge of drivers whose records were poor. Just as it is unreasonable to assume that insurance companies would have conditioned the issuance of new insurance upon the discharge of drivers whose accident records were good, so it is unreasonable to assume that insurance companies would have been willing to issue new insurance if the respondent retained in its employ those drivers whose accident records made the respondent a poor insurance risk. In my opinion, the respondent, faced with the necessity of dis-

missing those drivers whose accident records were poor, properly discharged them. I think it is a fair inference, however, that the respondent used this opportunity to rid itself of all other Pocatello drivers who were adherents of the Union and I concur in the result as to them.

Signed at Washington, D. C., this 25th day of February 1943.

GERARD D. REILLY

Member

National Labor Relations
Board

[Title of Board and Causes.]

Mr. Louis S. Penfield and Mr. Gerald P. Leicht,
for the Board.

Mr. Henry D. Moyle and Mr. David L. McKay,
of Salt Lake City, Utah, and Mr. A. L. Merrill,
of Pocatello, Idaho, for the respondent.

Mr. Delmar R. Peters, of Pocatello, Idaho, for the
Association.

INTERMEDIATE REPORT

Statement of the Case

Upon an amended charge duly filed by Teamsters, Chauffeurs, Warehousemen and Helpers, Local 983, A. F. of L., herein called the Union, in Case No. XIX-C-1071, and a charge duly filed by International Association of Machinists, Local No. 198, A. F. of L., herein called the Machinists, in

Case No. XIX-C-1082, and the National Labor Relations Board, herein called the Board, on June 6, 1942, acting pursuant to Article II, Section 36 (b) of the National Labor Relations Board Rules and Regulations—Series 2—as amended, having ordered that Cases Nos. XIX-C-1071 and XIX-C-1082 be consolidated, the Board, by the Acting Regional Director for the Nineteenth Region (Seattle, Washington), issued its consolidated complaint dated June 24, 1942, against Idaho Refining Company, Pocatello, Idaho, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1), (2), (3), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the consolidated complaint, amended charge and charge, accompanied by a consolidated notice of hearing, were duly served upon the respondent, the Union, the Machinists, and the Idaho Refining Company Employees' Benefit and Labor Association, herein called the Association.

With respect to the unfair labor practices, the consolidated complaint alleged, in substance, that the respondent through its officers, supervisors, and agents: (1) at various times in and after March 1940, inquired of its employees and applicants for employment whether they were members of the Union or any labor organization and informed the employees that the respondent was opposed to its employees joining unions; advised an employee in

October 1941 that its truck drivers would be discharged if they joined the Union; about November 16, 1941, inquired whether employees of the Idaho Gas & Oil Company¹ were members of the Union and threatened discharge to those who were or became members of the Union; instructed truck drivers in November and December 1941 to present their grievances directly to management and not through the Union or any outside representation and indicated to the said employees that truck drivers employed prior to November 14, 1941, had been discharged because they sought representation by the Union; and in January 1942 transferred truck drivers from Baker, Oregon, to Pocatello, Idaho, instructing the drivers at the time of the transfer to refrain from engaging in union or concerted activities; (2) discriminated in regard to the hire and tenure of employment of 20 named individuals;² (3) on or about November 14, 1941, and

¹The complaint alleged that Idaho Gas & Oil Company was a wholly owned subsidiary of the respondent and under its direct supervision and control. A finding with respect to this allegation is hereinafter made.

²James Ayers, K. C. Brower, S. R. Burkholder, Guy Campbell, Edward Boyd Cornia, Howard Davis, Wayne Douglas, Victor Ellingford, John Evans, Leonard Fowler, Arthur Heckert, Henry Henrickson, Carl Hill, A. Stanley Merrill, R. E. Miller, John Ray, Leland Stanford, P. P. Stanger, and Myron D. Whitesides because of their membership in or activity on behalf of the Union, and Leo Archibald because of his membership in or activities on behalf of the Machinists, or his activities on behalf of the Union.

at other times thereafter, refused to bargain collectively with the Union as the exclusive representative of its employees in a unit appropriate for collective bargaining, although the Union on or about November 14, 1941, became and at all times thereafter has been the duly designated representative of a majority of the employees in such unit, by (a) discharging on November 14, 1941, all employees in the appropriate unit in order to avoid its obligation to bargain, (b) refusing on November 21, 1941, and at all times thereafter, to recognize the Union although advised of its majority representation, and refusing to negotiate or discuss with the Union a proposed agreement or the discharge or reinstatement of the truck drivers discharged between November 14 and 21, 1941; (4) about July and August 1938, dominated and interfered with the formation of and thereafter interfered with the administration of and furnished financial and other assistance to the Association; and (5) by these acts, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. On July 7, 1942, the respondent filed motions for extension of time within which to answer, to make the consolidated complaint more specific, and to continue the hearing. The Regional Director granted the motions for an extension and to continue the hearing but did not pass upon the motion to make more specific.

On July 11, 1942, the respondent filed its answer to the consolidated complaint, in which it admitted the allegations of the complaint as to the nature of

its business but denied that it had committed any of the alleged unfair labor practices. By way of affirmative defenses the respondent averred that it had terminated the employment of the individuals named in the consolidated complaint for specified reasons not connected with their union membership or activity, and admitted a refusal to bargain with the Union for the reasons that the Union failed, upon request, to furnish proof of its authorization and the respondent was under written contract with the Association, as the representative of its employees. Other affirmative defenses of the answer are considered below in a discussion of the issues raised by the pleadings.

Pursuant to notice, a hearing was held from August 3 to August 13, 1942, in Pocatello, Idaho, before the undersigned, the Trial Examiner duly *designed* by the Chief Trial Examiner. The Board and the respondent, represented by counsel, and the Association, by its representative, participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

At the outset of the hearing, the Board moved to amend the consolidated complaint to correct certain minor typographical errors therein and the respondent renewed its motion to make more specific. The former motion was granted without objection and the latter denied by the undersigned.

At the conclusion of the Board's case, the respondent moved to dismiss the consolidated com-

plaint for failure of proof and specifically as to employees Douglas, Brower, Henrickson, and Ellingford on the ground that there was no evidence as to their union membership, and to strike the testimony of employee Archibald on the ground that the respondent had no knowledge of his union membership. The motion to dismiss the consolidated complaint and specifically as against the individuals named above was denied, as well as the motion to strike the testimony of Archibald. The Board consented to have stricken paragraph V, subdivision 2, of the consolidated complaint for lack of proof.³ At the conclusion of the hearing, the undersigned granted without objection the motion of the Board's attorney to conform the pleadings to the proof, and reserved decision on the respondent's motion to dismiss which is disposed of in the manner hereinafter indicated. Oral argument, in which the Board and the respondent participated, was had on the record. Following the hearing, the respondent submitted a brief. Neither the Board, the Union, the Machinists, nor the Association filed briefs with the undersigned.

Upon the entire record thus made, and from his observation of the witnesses, the undersigned makes, in addition to the above, the following:

³Therein the Board alleged that in August or September 1941, the respondent, through Gilbert Moyle, its general manager, and Frank Copenig, its secretary, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that it would not hire or retain in its employment truck drivers who belonged to the Union.

FINDINGS OF FACT

I. The business of the respondent

The respondent, Idaho Refining Company, is a Nevada corporation having its principal office and place of business at Pocatello, Idaho, where it employs approximately 90 employees. It is engaged in the refining of petroleum and crude oil and the manufacture of asphalt, and selling and distributing gasoline, oil, fuel oil, asphalt, and other products in the States of Idaho, Nevada, Utah, and Wyoming. During 1941, the respondent purchased for use in its operations raw materials and finished products valued at approximately \$1,328,000, of which approximately 90 percent was shipped to the respondent from sources outside the State of Idaho. During the same year the gross sales of the respondent amounted to approximately \$1,900,000, of which approximately 10 percent represented sales of commodities to points outside the State of Idaho.

A substantial portion of the products sold and distributed by the respondent are sold and distributed in Idaho by the Covey Gas & Oil Company of Idaho, its wholly-owned subsidiary, hereinafter called Covey, and the Idaho Gas & Oil Company, hereinafter called Idaho. At the time of the hearing, Covey and Idaho obtained all of their gasoline from the respondent. Covey and Idaho maintain their offices in the respondent's office building at Pocatello. In 1940, John N. Peterson and Arch Webb, treasurer and secretary, respec-

tively, of the respondent were president and secretary, respectively, of Idaho. Frank Copening, who succeeded Webb as the respondent's secretary, likewise succeeded to his office as secretary of Idaho, and in the spring of 1942, B. J. Albertson, the respondent's treasurer, became president of Idaho. The respondent has loaned Idaho approximately \$295,000 and exercises close control over its operations because of this debtor-creditor relationship. Individual owners of stock in the respondent corporation hold a similar stock interest in Idaho. Willard A. Sheppard, the respondent's manager at Boise, is likewise manager of Idaho's operations in that area and is paid by the respondent for acting in both capacities.

The relationship between the three corporations above referred to is such, and the officials of the respondent have so acted, as to constitute the respondent an "employer" within the meaning of that term as used in the Act, of the employees of Covey and Idaho.⁴

II. The organizations involved

Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, successor to Local No. 440,⁵ and International Association of Machinists, Local No. 198, both affiliated with the American Federation

⁴See *Bethlehem Steel Company v. N.L.R.B.*, 120 F. (2d) 641 (App. D. C.).

⁵In January 1942, Local No. 983, on action of the International Union, succeeded Local No. 440, whose charter was revoked.

of Labor, are labor organizations which admit to membership employees of the respondent.

Idaho Refining Company Employees' Benefit and Labor Association is a labor organization which admits to membership employees of the respondent.

III. The unfair labor practices

Synopsis of the chronology of the events

The respondent commenced refinery operations at Pocatello in the summer of 1938. The Association, presently in existence, was organized that fall on company property. Shortly thereafter it was granted a dues checkoff and other concessions. The respondent's officers and supervisors became members of the Association. In the fall of 1938, some of the respondent's truck drivers inquired about union membership and were told to decide the issue themselves. In June 1941, the Association and the respondent entered into an agreement fixing wage scales for all employees except the drivers. In the same month the drivers were placed upon a monthly wage scale of \$160. In September 1941, the drivers started to join the Union and by late October all but one had joined the Union. Their union membership was the subject of general discussion among the respondent's other employees.

On or about November 1, 1941, the Union undertook to draft a proposed contract which was submitted to the respondent on November 14. On November 10, the respondent received notice from its insurer of the cancellation, effective November 17,

of insurance covering the automotive equipment of the respondent, Covey and Idaho, due to frequency of accidents and an excessive loss ratio. On November 12 or 13, the respondent allegedly decided that in order to effectuate new insurance it would be necessary to discharge all of its truck drivers. On November 14, all of the truck drivers and one mechanic, also a union member, were discharged. On the morning of November 14, the Union presented its contract to the respondent, but no discussion of its various provisions was had and an agreement was made to meet again on November 21. The union representatives were not informed of the discharge of the truck drivers and they had no knowledge of this fact. At the second conference, held on November 21, the respondent refused to negotiate with the Union without proof of its majority designation, which proof, other than for oral assurances, was not submitted. On November 15 and 16, new truck drivers were hired, and on November 17 the respondent obtained new insurance for its equipment.

A. The Association

In the late summer or early fall of 1938, shortly after the respondent began operations at Pocatello, various employees expressed interest in organizing a union. George Hibbler, the respondent's chief and only chemist, together with George Mann, a helper on the cracking unit, became active in broaching the subject of organizing to other employees. About October the employees gathered together for their first meeting. Notice thereof

was passed around the plant and posted on a bulletin board, and the employees met in the refinery office. The meeting was attended by nearly all employees, including Kermit Rice, superintendent of transportation, Arch Webb, the respondent's secretary, Val Gaudet, then plant superintendent, and a large part of the clerical force. Mann presided and Hibbler spoke of the advantages offered by an inside union at his previous place of employment, mentioning such matters as sick and hospital benefits and a welfare fund. It was contemplated that membership would be open to all employees, including supervisors. At the meeting, the name Idaho Benefit Association was chosen. At the second meeting of the Association, held about a month later on company property, bylaws were adopted and officers elected.

George Mann, the Association's first president, was succeeded by A. V. Simpson, the yard foreman. At a later date, C. E. Henninger, foreman of the loading dock and one who, clearly in addition to other supervisory duties, exercised authority to hire and fire employees, was elected Association president. Henninger, late in 1939 or early 1940, suggested a change in the Association's name by adding the word "Labor" to the title in order, according to the witness, Haskell Duncan, to comply with the Act and make the Association a "bona fide" labor organization.

Following its inception, the Association met regularly in the respondent's offices. Commencing in the spring of 1940, the Association transferred its

meetings to the employee change house which had been built on company property at the suggestion of the Association, the respondent furnishing the necessary material and the employees the labor, to construct the building. About January 1941, after a decline in membership attendance at meetings, control of the Association passed, by constitutional change, to its Board of Directors, which carried on Association affairs between annual or special meetings. Simpson, the yard foreman, was president of the Association when this decision was made. The Association's directors met monthly in the change house.

In addition to the supervisors mentioned above, the following officers of the respondent were members of the Association during their tenure with the respondent: Arch Webb, the secretary; Frank Copening, Webb's successor as secretary; John H. Peterson, treasurer and president of Idaho; and B. J. Albertson, Peterson's successor as treasurer. In June 1942, the following supervisors were Association members: C. E. Henninger, truck dispatcher and superintendent of the loading dock; Kermit Rice, superintendent of transportation; E. V. Smith, plant superintendent; A. V. Simpson, yard foreman; and G. L. Farnsworth, chief chemist. The activity of some of the supervisors was not confined solely to mere membership and payment of dues to the Association. As indicated above, Simpson served at least one term as the Association's president. Haskell Duncan, while night superintendent in 1940, served as a member of the

Association's safety committee. At the annual meeting of the Association held on February 13, 1942, 22 members were present, including supervisors Smith, Simpson, Farnsworth, and Henninger. Minutes of the meeting introduced in evidence indicate that these supervisors voted for new officers and an amendment empowering the Association's directors to amend the bylaws respecting hospital benefits. Henninger was chairman of the nominating committee reporting to the meeting.

In May 1939, the respondent was placed on the unfair and nonpatronage lists of the Pocatello Building Trades Council and the Pocatello Central Trades and Labor Council. In September, like action was taken by the Idaho State Federation of Labor. In an attempt to adjust its differences with these bodies in the fall of 1939, Webb and Peterson sought a conference with August Rosqvist, the secretary of the State Federation of Labor. Rosqvist informed Webb and Peterson that their differences could be composed if the respondent employed union labor on its construction work and union truck drivers. At the conclusion of the conference Webb invited Rosqvist and Thomas Brandt, secretary of the Central Trades and Labor Council, to address a gathering of the respondent's employees and explain the benefits of trade union membership. Thereafter, a meeting of the respondent's employees was held on company property. Aside from a decided conflict on one point, a summary of all testimony regarding this meeting reveals that George Mann, who was or

had been the Association's president, presided at the meeting and that Webb introduced Rosqvist and Brandt as A.F. of L. representatives who spoke and answered questions of the assemblage. Rosqvist explained how employees could join the A.F. of L. and truck drivers the Union. Webb and Peterson, both Association members, were present while Rosqvist and Brandt spoke. The conflict above mentioned arose over the question of whether Webb and Peterson left the meeting with Rosqvist and Brandt upon completion of their remarks and whether at some time during the course of the gathering, Webb indicated by his remarks the respondent's hostility to unions and favor of the Association. With respect to the latter point, Anderson, an Association member, testified as follows:

Well, he [Webb] told us that he wouldn't advise us to join the union, or not to join it. He just left it up to us, whether we wanted the union or whether we didn't. . . . Well, he said that he didn't think that a Union would do anything for us that the company wouldn't do.

Webb denied any remarks indicating that the respondent would match any benefits obtained through organization, testifying that he advised the employees that union membership was a matter for them to decide. Copening corroborated Webb's testimony. The undersigned is satisfied, upon review of all credible testimony concerning this meeting, that Webb and Peterson left the meeting with Rosqvist and that Webb did not make the remarks attributed to him by Anderson. At the close of the

meeting, those present, at someone's suggestion, decided by a vote of about 40 to 2 to reject union affiliation.

In addition to the respondent's support of the Association by reason of officers' and supervisors' membership therein, the Association realizes a steady profit from concessions that it operates on the respondent's property. Vending machines owned by the Association dispense soft drinks and the boiler house fireman sells cigarettes to the employees. The Association also maintains a laundry service for the employees operated from company property. Deductions for concession purchases are handled in the following manner: the Association's secretary-treasurer prepares a list of employee debts for deduction from the pay check of the employee for any credit which the Association has extended for the purchase of soft drinks, candy cigarettes, gasoline,⁶ and the laundry service. Usually this

* ⁶Considerable testimony was adduced concerning a meeting of the respondent's employees held in the spring of 1940, at which it was alleged Henry D. Moyle, the respondent's vice president and general counsel, advised the employees that it would arrange for Association members only a discount on gasoline purchased at a local Covey service station. Duncan testified: "It runs in my mind that it was members of the Association," who were to get the discount through Covey. The testimony of the respondent's witnesses in refutation of the Board's contention that the discount was restricted to Association members is persuasive to the contrary. The undersigned is satisfied and finds, on the basis of this testimony, that the meeting was called to ac-

work is done after office hours, but occasions do arise when part at least of the secretary's calculations take place on company time.

Before each pay day, Carlson turns the record of pay-roll deductions over to the pay-roll clerk and, on the basis of Carlson's figures, the clerk deducts all debits, including Association dues of 50 cents a month in the case of Association members only, from the pay check.⁷ Thereafter, the pay-roll clerk hands the Association's secretary the respondent's check for the total of all deductions made. The amount checked off for dues is deposited in the Association's hospital benefit fund.⁸ Any profit re-

quaint all employees of the possibility of their securing FHA loans to aid in financing home building; that the respondent indicated its willingness to assist home builders in the matter of securing discounts on building materials as well as gasoline, and it cannot reasonably be inferred that all or any of the proffered help was to be restricted to Association members. None the less, it appears clearly from the testimony of P. W. Carlson, the Association's secretary-treasurer, that when an employee signs an Association application card, Carlson furnishes Covey the name and automobile license number of the applicant so that he may secure his gasoline discount. How or who makes similar arrangements, if any, in the case of a non-Association member is not clear.

⁷Dues of Covey and Idaho employees who are Association members are likewise checked off.

⁸This would include, of course, the checked-off dues of the respondent's officers and supervisors such as Webb, Copening, Smith, Henninger, and others.

maining after payment of the cost of operating the concessions is deposited in the Association's welfare fund. For the period October 1-16, 1941, pay-roll deductions, including dues check-off for Association members, candy, drinks and laundry, totalled \$128.87. For the period June 1-15, 1942, deductions for these items equalled \$187.13. The dues check-off inaugurated in 1938 is pursuant to authorization given the respondent at the time the employee applies for membership in the Association. Gilbert Moyle was unable to state who on behalf of the respondent agreed to furnish this privilege to the Association. He readily admitted that when the dues check-off was started the respondent assumed that the Association represented a majority of the employees. Association bylaws, adopted February 1941, provided that the respondent pay to its secretary "once each month the total amount of dues collected from the members." Authorization for deduction of concession purchases is not written but is handled by arrangement between the respondent and the Association.

In May 1941, some of the employees expressed dissatisfaction over their wages and decided to seek increases. Some of the still operators circulated a petition upon which each employee was asked to state the hourly wage he was then receiving and the wage he was demanding. Delmar Peters, the Association's president at the time, testified that the petition was not Association inspired, "but it fell into that category shortly after." The respondent's drivers were not asked to sign this petition, because

the employees instrumental in circulating the petition "didn't know anything about driving a truck or anything like that." The petition was handed to a committee consisting of Peters, John Anderson, Max Pope, and Kay Mills. Peters presented the proposed wage scale to W. M. Miller, then plant superintendent, asking him to present it to Gilbert Moyle and to secure an appointment for the committee to meet with Moyle. About 10 days later Moyle informed Peters, through Miller, that he would meet at an agreed time to consider the proposed wage scale. Thereupon, Peters posted a notice for a meeting of the Association to be held on May 21 in the refinery office. At the meeting, Moyle offered the respondent's proposed hourly wage scale, which was less than the demands of the workers. The employees voted to accept it and, at Moyle's suggestion, to incorporate the scale in an agreement between the respondent and the Association. Some truck drivers who were present asked Moyle why the wage scale did not cover them and were informed that the matter of adjusting their wage rates would be considered later.⁹ Following the meeting, a local attorney drafted an agreement incorporating the respondent's wage scale. It was thereafter signed

⁹Following the execution of the above agreement, the drivers conferred with Gilbert Moyle, John Peterson, Rice, and Henninger. They were told that due to the fact that some of the respondent's trucks crossed State lines, it would be necessary, under rules of the Interstate Commerce Commission, to place the drivers on a monthly wage. This wage was fixed by the respondent at \$160 a month.

by officers of the Association and presented to the respondent for the signatures of its president and secretary.

This agreement, effective June 1, 1941, for a period of one year, established new hourly wage scales for 12 categories of refinery employees, with provision for time and one-half for all overtime. The agreement did not include an hourly wage scale for truck drivers. It is significant that the Association was not asked to prove its majority representation, the respondent accepting oral assurances that this was the fact, and Gilbert Moyle assuming, as he testified, that Peters had authority to represent the Association. Further, although there is no express recognition of the Association in the agreement, as the employees' exclusive representative, the agreement did by its language intend to fix with the Association "a certain definite, designated wage scale for the employees" of the respondent. In effect, the Association was accorded the recognition of an exclusive bargaining agent.

In May 1942, the employees again were asked to set down on paper the hourly wage rate which each thought he was qualified to receive. Peters testified that he personally contacted every Association member except the truck drivers and mechanics concerning a new hourly wage rate. Through the instrumentality of Smith, plant superintendent at this time, Peters arranged for the Association's committee to meet Gilbert Moyle, who agreed to consider the matter and confer again with the committee. A few days later, Moyle presented the respondent's

counter-offer. In the absence of a quorum¹⁰ at the Association meeting, called to consider the counter-offer, the matter was referred to its Board of Directors for official action. At its meeting, it was voted to accept the respondent's wage scale and to incorporate it in a new six-months agreement which was copied from the 1941 agreement. Except for pertinent dates and the hourly wage scales, the 1942 agreement was an exact copy of the 1941 agreement. Gilbert Moyle, as in 1941, accepted Peters' assurance that the Association represented a majority of the employees.¹¹ The agreement was thereafter executed by officers of the Association and by Gilbert Moyle and Copening, effective on June 1, 1942, for a period of 6 months.¹²

Concluding findings with respect to the Association

From the very inception of the Association, the respondent displayed an interest in its affairs. The first Association meeting held on company property was attended by at least three important supervisory officials. Thereafter, officers of the respondent and its supervisors became members of the Association. Two supervisors, Simpson and Henninger, were

¹⁰A quorum consisted of 15 members.

¹¹It seems reasonably clear that a majority of the employees, including drivers, belonged to the Association.

¹²The agreement as executed contained a wage rate of 60 cents per hour for truck drivers. Presumably this was for extra-board drivers, for at this time regularly employed drivers received \$175 a month.

elected Association presidents and Henninger, as indicated above, was otherwise active. In February 1942, four supervisors attended the annual meeting, voting for the election of Association officers and a proposed change in the bylaws. As late as June 1942, the dues of the respondent's officers and supervisors were being checked off and turned over to the Association. At no time did the respondent attempt to stop or limit in any way the action of the supervisors in any of the Association's affairs, and they assumed complete freedom of action at all times. The non-supervisory employees were never informed of any limitation upon the authority of the officers or supervisors whom they considered to be the respondent's representatives and whose actions conformed to the pattern established by the respondent. That such a relationship between an employer and a labor organization soon develops on the part of employees a reliance and dependence on the employer rather than the labor organization as the employee representative, is revealed in this case by the overwhelming vote of confidence given the Association in the vote conducted on company property following the address of Rosqvist. It can hardly be asserted that this vote afforded employees an opportunity to fairly consider the relative advantages and disadvantages of trade union versus Association membership.

Of equal significance is the substantial financial assistance rendered the Association from the dues payments of the respondent's officers and supervisors. Regardless of reasons advanced by the

respondent for its officers joining the Association, this, nonetheless, is financial support of the Association. Of further significance in considering the question of financial support is the substantial group of concessions which the Association operates on company property with the respondent's assistance. The deductions for employees' purchases from concessions, together with the dues check-off, completes the picture of material financial aid given the Association by the respondent.

Indicative of the respondent's attitude towards the Association is the recognition accorded to it in executing the 1941 and 1942 agreements. No inference is intended that hard bargaining is always the hallmark of a free and independent labor organization, but the respondent's attitude towards the Association revealed in these dealings is so markedly different from that imparted to the Union in November 1941 as set forth below, as to indicate the respondent's favor of the Association and opposition to the Union.

The respondent urges that its afore-mentioned activities did not constitute unfair labor practices because Association members testified that they were not coerced into joining the Association and did so of their own free will. In support of its contention, the respondent points to the testimony of Peters that the employees desire to be represented by the Association. The undersigned rejects this contention as being without merit. The real question for determination is whether the acts of the respondent constituted interference with, restraint, or coercion of its employees in the exercise of rights guaranteed

in Section 7 of the Act. Evidence concerning the effect or lack of effect of the respondent's acts on particular individuals is clearly not decisive of this issue. The reasonable inference is that the anti-union conduct of an employer does have an adverse effect on self-organization and collective bargaining.¹³

From the foregoing, notwithstanding employee assertions relied upon by the respondent, the undersigned finds that, since 1938, the respondent interfered with, supported, and dominated the formation and administration of the Association; and that the respondent, by such conduct and by its entire course of conduct, interfered with, restrained, and coerced its employees in the exercise of the rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining, as guaranteed in Section 7 of the Act.¹⁴

B. Interference, restraint, and coercion

The respondent's decision in June 1941 to place its Pocatello drivers upon a monthly wage basis was the cause of dissatisfaction among the drivers. By the middle of July the drivers had determined that

¹³See *Matter of Grower-Shipper Vegetable Ass'n and Fruit and Vegetable Workers' Union of California*, No. 18211, 15 N.L.R.B. 322, enf'd as modified N.L.R.B. v. *Grower-Shipper Vegetable Association*, 122 F. (2d) 368 (C.C.A. 9).

¹⁴N.L.R.B. v. *Link-Belt Co.*, 311 U.S. 584; N.L.R.B. v. *Automotive Maintenance Machinery Co.*, 62 S. Ct. 608, rev'g 116 F. (2d) 350 (C.C.A. 7).

shift responsibility to other supervisors. The undersigned finds that Gilbert Moyle made the statements attributed to him by McBride and Cornia, thereby conveying to the drivers the respondent's opposition to the Union.

When Stiff's trucks were transferred to Pocatello in January 1942, the drivers, including McBride, were stationed at Gooding, Idaho. McBride testified that about January 12, 1942, Stiff told the drivers that Gilbert Moyle informed him that the drivers, upon transfer, were not to discuss union affairs or to associate with the Pocatello drivers "in that capacity"; that the respondent had experienced "trouble with the laborers in the Union capacity" and did not want this to occur again. Stiff did not testify and Moyle was not questioned concerning this incident except to deny generally that he had attempted to discourage membership in "Teamsters Local 440 or 983." The undersigned finds Stiff to have made the remarks.

Leo Archibald, a truck mechanic and member of the Machinists, was active in assisting the drivers to enter the Union by distributing application cards and collecting their initiation fees and dues. He testified that, about November 1, his foreman, Kermit Rice, who at one time had been a member of the Machinists, remarked that trade union membership had never benefited him. Rice denied Archibald's testimony. About 9:30 on the morning of November 13, James Ayers, one of the drivers, was about to depart from the refinery with a loaded

tank for Jerome, Idaho. He testified that, just before leaving, Rice came up to him and remarked that he had heard "the boys joined the Union," and inquired what it was the drivers wanted. According to Ayers, he acknowledged that the drivers had joined the Union and answered that they were going to present a contract demanding a monthly wage of \$185 and a guarantee of \$100 a month for extra-board drivers.¹⁷ With respect to this Rice testified first that he did not think he had any such conversation and then denied Ayers' testimony. Arthur L. Heckert testified as follows concerning a conversation he is alleged to have had with Rice at the time he was hired in 1940: "Well, he asked me if I belonged to any union, and I says 'No.' and he says, 'Well, that is okeh.' He said 'Mr. Moyle is strictly against union.' " On cross-examination Heckert vigorously affirmed his previous testimony. Rice admitted that he talked to Heckert but denied that he made any remarks concerning Gilbert Moyle, unions, or that he inquired of Heckert's union membership. The demeanor of Ayers and Heckert impressed the undersigned. There is a consistent pattern of interest in the union membership of the men Rice had authority to hire and fire, as shown by the testimony of Archibald, Ayers, and Heckert. The undersigned was not favorably impressed by Rice's demeanor or bearing as a witness and finds that he did make the statements sub-

¹⁷Extra-board drivers are those who work when regular drivers are not available or otherwise engaged.

stantially as ascribed to him by these three witnesses.

On November 14, the respondent discharged all of its Pocatello drivers, under circumstances more fully described below, and at once undertook to secure new drivers for its trucks. Trevor Moss applied to Rice for a job as a driver on the afternoon of November 15. At the completion of a test run Moss went to the respondent's office. Moss testified that there he found Gilbert Moyle, Copening, and Rice; that Moyle asked him if he belonged to any union, to which he replied, "no"; and that Moyle then said: "We have our own union and own organization out here in the company," which the employees were free to join. Gilbert Moyle testified that he was in and out of the office while Moss was interviewed, but denied talking to Moss, questioning him about union membership, making any remarks about the Association, or that anyone in his presence asked Moss if he belonged to a union. Rice denied that the question of union membership was discussed in his presence by Moss, Moyle, or anyone else. Finally, Copening testified that it was his recollection that only he and Rice were present; that he interviewed Moss and questioned him concerning his marital status, driving experience, and work habits. Clearly, Moyle's partial presence at the interview gave rise to the opportunity to make the comments he is alleged to have passed. Rice and Copening denied that they questioned Moss concerning union membership, but Moss did not testify that they did. Moss pinned responsibility solely upon Moyle. In this respect the alleged

remarks are consistent with Moyle's remarks to McBride as found above and with the true cause, as hereafter found, for the discharge of all drivers on November 14. The undersigned finds that Gilbert Moyle questioned Moss concerning his union membership and expressed approval of the Association as the respondent's "own organization."

Merlin Bowman was also give a test run and hired as a driver on either November 16 or 17, 1941. He testified that during his interview by Copening concerning his previous experience and habits he was asked if he belonged to a union. Copening admitted an interview with Bowman, that it was concerned with his experience and habits, and that he asked Bowman if he had filed out an application for employment blank which asked, inter alia, the "Lodge Affiliation" of the applicant. He denied asking Bowman if he belonged to a labor union. The undersigned credits Bowman's testimony and finds Copening did question him concerning his union membership.

Roy Williams was hired by Gilbert Moyle to work for Idaho at Boise. Williams voluntarily quit in May 1942, because of differences with his foreman, W. A. Sheppard, who was the respondent's district manager and also manager of Idaho at Boise. Williams, a non-union member, testified that on November 13, Sheppard telephoned him at his home and inquired if Williams knew where Sheppard could hire truck drivers to go to work

at the Pocatello plant the next day. Williams told Sheppard that he did not know of any drivers. He was again asked the same question by Sheppard the next day in the Boise office. On November 16, Sheppard came to Williams' home and wanted to know if Ray Pittman and Mervin Zollman, Williams' co-drivers, were union members. Williams replied that he did not know and, upon being requested to find out, refused to do so. Sheppard then, according to Williams, said that if they had joined the Union that he [Sheppard] would use two recent accidents they had been involved in as an excuse to fire them. Sheppard admitted that he telephoned Williams to ascertain the names of two drivers to refer to Gilbert Moyle, following a telephone conversation with Moyle on November 13, wherein the latter informed him that he was going to discharge all of the Pocatello drivers. Sheppard, denied any conversation with Williams on November 16, or inquiry concerning the union membership of Pittman and Zollman. He testified that for some unknown reason Williams was embittered against him and the respondent. He admitted, however, that he had at one time been on friendly terms with Williams and visited his home on at least two occasions. There is no evidence that whatever feeling later developed between the men existed on November 13. Sheppard admittedly sought his help on that day. It may reasonably be inferred that the subject of the requested help was a matter of further discussion on November 16 and that, because of the friendly relation between the men at the time. Sheppard made the

remarks attributed to him. The undersigned so finds.

The respondent urges that, even assuming these statements to have been made by its supervisors, they were sporadic, mere expressions of opinion, and not intimidatory in fact because union drivers were hired following the utterance of these remarks. That they were sporadic is not significant when consideration is given to the fact that some of the comments were made to drivers, then attempting to organize, by responsible agents who exercised hiring and firing authority over them. Nor can the contention that the statements were mere expressions of opinion have validity when the utterances are placed in juxtaposition to the totality of events occurring at this time. What might otherwise be a harmless expression of honest personal opinion takes on a different color, when uttered to or overheard by an employee who joins a union to better his working conditions, or is made during controversy between employees and employer over the former's rights to self-organization. It was the respondent's entire course of conduct during the period in question, as well as the statements made by its supervisory employees, that had this coercive effect. Their views about the Union merged into and were only a part of respondent's total conduct designed to forestall the Union.¹⁸

¹⁸See *N.L.R.B. v. Virginia Electric and Power Company*, 314 U.S. 469. See also the language of Learned Hand, Circuit Judge, in *N.L.R.B. v. The Federbush Co., Inc.*, 121 F. (2d) 954 (C.C.A. 2).

The undersigned concludes and finds that the respondent through its agents, by interrogating employees about the Union and union activities; by expressing a preference for the Association as its "own organization"; by threatening directly and indirectly employees with termination of employment because of membership or activity in the Union, which it opposed, and by the totality of such conduct and action, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

The undersigned makes no finding based upon the testimony of R. E. Miller that on March 9, 1942, Miller was offered a job as truck driver by Henninger and then asked "how he stood with the union." The undersigned is satisfied, based upon Henninger's testimony, that the remark was a natural one made upon circumstances which reasonably induced the question. In December 1941, Henninger had offered Miller a job on the loading dock and Miller had refused, on advice of the Union. This he told Henninger. It seems understandable that, once having refused a job because of union advice, when next offered a job Henninger would want to know whether the same advice still barred acceptance.

C. The discriminatory discharges

1. Leo Archibald

Archibald was first employed by the respondent as a truck mechanic and welder on January 25, 1941. His duties included the general repair and maintenance of trucks and trailers and the welding and

repair of transportation tanks. Archibald started at 50 cents an hour and about March 1, 1941, his hourly wage was raised to 60 cents. He joined the Association in January 1941, and signed an application card in the Machinists in September 1941.

Archibald talked to the drivers concerning the Union and discussed with them ways and means of bettering their working conditions. He took some drivers and Oran Thomas, another mechanic, to Rosqvist's home, where they signed application cards and later, at Rosqvist's request, collected initiation fees and dues from drivers and machinists. A. Stanley Merrill testified that Archibald spoke to him on a number of occasions about the Union and that he "might have been" influenced by Archibald's efforts in this regard. Archibald was never questioned by the respondent concerning his own union affiliation, but Rice did ask him about the affiliation of the drivers. Although Rice and Gilbert Moyle denied any knowledge of Archibald's union membership or activities, their denial is unworthy of belief and it is a fair surmise, in view of the other circumstances of the case, that Rice, at least, was aware of his union membership. In a small plant like the present one it is a reasonable inference that knowledge of Archibald's extensive union activities came to the notice of higher management officials.¹⁹

The Board alleged that Archibald was discharged on November 14, 1941, because of his membership

¹⁹N.L.R.B. v. Abbott Worsted Mills, 127 F. (2d) 438 (C.C.A. 1).

drink intoxicating liquor and he testified that at no time during his employment did he specifically speak to or caution Archibald about this habit.

Archibald admitted that he would take a drink occasionally, and had been drunk on occasions, but denied drinking on the job or appearing for work in a drunken condition. He attributed his illnesses and relapses complained of by Brown and Rice to stomach ulcers for which he had previously been under medical treatment. He also admitted that Rice had complained about the welding job and that he was once criticized for slowness; that he did absent himself from work on three or four days due to illness and on another occasion for personal reasons; and that on Monday, November 10, he did report for work, felt ill, and asked for and received permission to go home. Although Rice testified to the contrary, Archibald admitted that on one occasion Rice told him he would have to let whiskey alone if he wanted to work; that he thought Rice was joking and told him to fire him if he ever came to work drunk.

Archibald's working hours averaged 9 to 9½ hours a day, including Sunday, during the period of his employment. The mechanics were off duty two Sundays a month, and when they accumulated overtime above 40 hours were accustomed to take off a day, combining it with Sunday, without asking permission. This fact partially explains Archibald's 37 absences, including 25 Sundays, over a period of about 10 months. Brown, during the same period, was absent 13 days, including 9 Sundays,

and, because of his seniority and ability, was accustomed to work more Sundays than the other mechanics. Between June 1 and August 23, 1941, mechanic Boyer was off-shop 16 days, including 10 Sundays, and mechanic Thomas was absent eight days, including five Sundays, between September 3 and November 13. According to Archibald's uncontradicted testimony, he was absent only once without permission. Thus, on a comparative basis, the record of Archibald's absences alone is not persuasive as grounds for dismissal.

On coming to work on Friday, November 14, Archibald changed clothes, unlocked his tools, and Rice told him for the first time of his discharge. He testified that, on inquiry as to cause, Rice replied, "for getting drunk and laying off work." Archibald asserted that he laughed at this rejoinder and remarked that both men "knew what it was about." Rice testified, on the contrary, that he "explained that our work had slowed up considerably, and that his work was unsatisfactory and that I just wouldn't need him any more," and Archibald accepted this statement. He denied any statement about Archibald's drinking. The undersigned accepts Archibald's account of what was said to him on November 14.

Gilbert Moyle testified that he asked Rice about November 1 why he continued to put up with Archibald's conduct and Rice replied that, as soon as the work then on hand was completed, Archibald would be fired. Rice testified that he made up his mind to discharge Archibald on Monday, November 10,

when Archibald "came out and couldn't work." Why judgment to discharge was not exercised on November 10 and why Archibald continued to work until November 14 is not satisfactorily explained. Although it may be true that by November 13 Archibald had completed a specific work assignment, the overall picture of the respondent's operations indicates rather clearly that work in the garage continued unabated after that date. Brown testified that the garage "had all the work we could handle" at this time. The undersigned is not convinced or persuaded by the testimony of Rice that the decision to discharge Archibald was reached on November 10.

It is the undersigned's considered judgment that although Archibald's absences, ability as a worker, and illness, whether caused by ulcers or drink, may have contributed in part to his discharge, the underlying motive and real cause for the respondent's discharge of Archibald on November 14 is found in his union activities and the union membership of the drivers with whom he was so closely identified. The incidents of allegedly reprehensible conduct cited by the respondent as justification for Archibald's discharge occurred several months, except for his absence on November 10, before his discharge. With respect to this latter occasion the evidence is conflicting and contradictory as to the reason for Archibald's absence, Rice concluding from Archibald's appearance that he had been drinking. To the undersigned it is reasonably apparent that resurrection of these various incidents was an attempt to

“justify * * * discharge in retrospect, and that they did not motivate his dismissal.”²⁰

The undersigned finds that Archibald was discharged because of his union membership, more particularly his activities in behalf of the Union and because of his close association with its members, and that by thus discharging Archibald, the respondent discriminated in regard to his hire and tenure of employment, and thereby discouraged membership in the Machinists and the Union, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

2. The truck drivers at Pocatello

Sequence of events

The respondent had an extensive fleet of automotive equipment for the distribution of its products, including passenger cars, light and heavy gasoline trucks, trailers, and semi-trailers. On August 22, 1940, the Firemen's Insurance Company of Newark, New Jersey, and The Metropolitan Casualty Insurance Company of New York, both hereafter called the Insurance Company, issued a joint policy FM 199, extending protection on this equipment against losses due to fire, theft, property damage, personal liability, and collision. The same policy also covered the automotive equipment of Covey and Idaho, because, in the words of Decker Little, branch manager of the Insurance Company, all three corpora-

²⁰Beckerman Shoe Corporation of Kutztown and United Shoe Workers of America (C.I.O.), 43 N.L.R.B., No. 75.

tions "were so closely interwoven." Not only vehicles driven by the respondent's truck drivers at Pocatello were thus covered, but also the vehicles, passenger and truck alike, driven by any agent of the respondent, Covey, and Idaho.

According to Little, between August 1940 and August 1941, the Insurance Company suffered disastrous losses on its policy FM 199, the loss ratio exceeding 100 percent of the allotted premium.²¹ In July 1941, the Insurance Company was loath to renew but, after conferring with the respondent, did so in the hope "that the line would not continue to show a loss ratio." Accordingly, on August 22, 1941, R. S. Turner, an authorized agent of the Insurance Company at Pocatello, issued a renewal policy, FM 227, continuing the coverage over the automotive equipment of the respondent, Covey, and Idaho.

²¹The record discloses the following losses paid on this policy:

Date	Driver	Loss
Dec. 11, 1940	Henry Henriksen	\$ 298.53 property damage
		2000.00 public liability
May 15, 1941	Boyd Cornia	2500.00 public liability
June 10, 1941	Fred Pearson	299.00 collision
		1250.00
August 15, 1941	Hollis Walker	25.10 property damage

Henriksen and Cornia were drivers on the respondent's Pocatello pay roll. Pearson was a "lessee account" at Challis, Idaho, and the loss was on a 1941 tank truck belonging to the respondent. Walker was either an agent of Covey or Idaho and covered under the blanket policy.

The respondent's accident experience under the renewal policy showed no signs of improvement. Between August 31 and November 5, 1941, the Insurance Company paid on 13 claims arising out of accidents.²² The respondent was aware of these accidents, as well as those experienced under its older policy. From time to time during the life of the older policy it had made desultory attempts to reduce its loss ratio by holding meetings at which

²²The date of accident, driver involved, and loss is shown in the table below:

Date—1941	Driver	Amount of loss
August 31	Conrad	\$ 7.00 property damage
Sept. 6	Ellingford	112.50 “ “
Sept. 12	Whitesides	50.00 “ “
		1044.10 collision “
Oct. 4	Zollman	90.35 property “
Oct. 16	Douglas	90.40 “ “
		1926.00 collision “
		52.55
Oct. 22	Crawshaw	26.45 property “
Oct. 24	White	215.00 “ “
		249.04 collision “
Nov. 5	Patterson	625.00 “ “
Oct. 24	White	315.00 “ “

[Turner, who testified concerning these claims, was unable to state with clarity whether the driver involved in this latter accident was White or Whitesides.]

Ellingford, Whitesides, and Patterson were on the Pocatello pay roll; Douglas worked under Stiff at Baker, Oregon. The other drivers mentioned above drove the respondent's equipment, or that of Covey and Idaho, at places other than Pocatello.

the drivers were urged to exercise more care in driving. These meetings, according to Rice, were held "just at random" and it is clear from all the evidence that the respondent did not undertake in an organized and systematic way to fashion a safety program to which its drivers had to adhere.

On October 27, 1941, Little wrote the respondent insisting that it do something to reduce its accident frequency and losses, and threatening to cancel upon the occurrence of another loss. This letter was never answered by the respondent. Ayers, a driver, heard that the respondent received this letter and was aware of the threat to cancel on the next occurrence of a major accident.

On November 5, Patterson, a driver, was involved in a collision on which the Insurance Company paid a claim of \$625.²³ On November 8, Little called upon Gilbert Sheets, the respondent's president, in Salt Lake City and informed him that he was forced to cancel policy FM 227. Sheets thereupon informed Gilbert Moyle of this fact. On Monday, November 10, Copening at Pocatello received telegraphic notice of cancellation, effective as of noon, November 17.²⁴ Little testified that the policy

²³He was discharged prior to November 14, because of this accident.

²⁴This finding is based upon Copening's testimony. Gilbert Moyle testified he received the telegram and showed it to Copening. The telegram read as follows:

Due to High Loss Ratio Experienced On
Equipment Owned By Your Corporation For
Past Few Years We Are Cancelling Off Policy

was cancelled at the election of the Insurance Company because "the frequency of collision claims and property damage claims" had practically wiped out the premium charges set up to cover losses. In cancelling the policy the Insurance Company made no attempt to segregate losses attributable to the respondent's drivers as distinguished from those caused by Covey or Idaho.²⁵ Following receipt of the telegram on the 10th, Gilbert Moyle and Copening discussed the situation and quickly came to the decision that the respondent's trucks could not operate without new insurance. Between November 11 and 13, they did not effectuate new coverage.

Sheets, was also an officer of E. L. Sheets Company, of Salt Lake City, an insurance broker, and

FM 227 By Registered Cancellation Notice to Be Effective November 17, 1941, Noon Standard Time. Please Make Other Arrangements For Insurance.

²⁵Turner testified that the major losses were caused by collisions due, according to adjusters' reports, to the negligence of drivers. The respondent asserted that its accidents were caused by negligence on the part of the drivers occasioned by excessive speed in driving. The true cause for all or a majority of the accidents need not be determined by the undersigned, for none of the drivers here involved was discharged for any alleged negligence in the use of the respondent's equipment. This latter statement is subject to the following qualification: The respondent urges it discharged Wayne Douglas for an accident on October 16, 1941. The case of Douglas is considered separately below.

had engaged in the general insurance business for about 20 years. On the morning of November 12, he and Henry Moyle held a conference at which they discussed the cancellation of the policy and the situation of the drivers. According to the testimony of both Sheets and Henry Moyle, after a lengthy conference and consideration of all factors raised by the cancellation, it was there decided, without consultation of Gilbert Moyle, that the only way to secure a new policy by November 17 was to discharge all of the drivers. According to Sheets, the decision to discharge all drivers was for the reason that, “. . . there were so many of them, and you couldn't pick one or two out of the bunch, because it wasn't one or two but a majority of them, . . .;” and the discharge of all would be convincing evidence that the respondent was “serious in trying to get a decent loss ratio.” According to Henry Moyle, he and Sheets, “came to the conclusion that without the discharge of our drivers, we would not be able to get anybody to consider the re-writing of our insurance.” He testified further that Sheets informed him every possible insurance agency had been contacted, that at the time no favorable reply had been received and “nothing short of a complete change—definite change—in our set-up would be sufficient to put us in a position where any of the companies would consider us,” and since neither the equipment nor job to be done could be changed, they “came to the conclusion that there was only one thing that could be changed, and that was the drivers.”

Quite aside from the rule of the Interstate Commerce Commission requiring insurance for interstate carriers, or the respondent's inability to provide insurance as a self-insurer, it is appropriate to consider certain other factors, including available evidence covering the experience and driving records of the Pocatello drivers.

Sheets and Henry Moyle knew of the losses which the respondent had incurred and both were familiar with the insurance problem created by these losses. Both men previously had never hired or fired any employee at the refinery, and yet allegedly made their decision on November 12 without consulting the plant personnel directly in charge of operations. It is undisputed that in reaching this important decision neither man had before him the individual record of any driver as to his driving experience and accidents or made any attempt to limit the effect of their decision to only those drivers responsible for losses. Sheets was aware of the fact that some of the accidents were caused by drivers employed by Covey or Idaho and that many of the Pocatello drivers had never had an accident. He testified that he assumed without inquiry that the substantial losses involved transport trucks driven by Pocatello drivers and made no attempt to segregate any loss caused by drivers of Covey or Idaho because they were not "the main offenders." That there is no basis for any such over-all assumption is shown by the loss under the previous policy incurred by Pearson, an Idaho employee, involving \$1549.00. Henry Moyle

testified that the respondent's application for insurance only received serious consideration after the discharge of the drivers. There is no evidence that any insurance company required as a condition to the issuance of a policy the discharge of all the drivers employed prior to November 14. Furthermore, there is no adequate explanation why the discharge of drivers never involved in any accident would cause the respondent's application for insurance to receive more serious consideration. Additional light is thrown upon the decision of Sheets and Henry Moyle by examination of the driving records of the discharged drivers. Ayers, Brower, Campbell, Hill, Davis, Heckert, Ray, Stanford, and Miller never had an accident during the period of their employment. Evans and Fowler were involved in slight accidents where the question of fault is an open one. Cornia was absolved of blame for a serious accident, and five men, Hendickson, Whitesides, Merrill, Ellingford, and Burkholder were involved in serious accidents. Copening and Gilbert Moyle testified to observation of the speed and carelessness with which the respondent's drivers drove trucks. Yet, despite this observation and their knowledge of losses, there is no clear or compelling evidence that, prior to November 14, other than for sporadic meetings of the drivers at which careful driving was stressed and the discharge of Patterson, the respondent otherwise disciplined those who allegedly were responsible for the accidents.

Henry Moyle came to Pocatello on the afternoon of November 13. There, according to his own testimony, he informed his brother, Gilbert Moyle, and Copening of the decision reached the previous day in Salt Lake City to discharge the drivers and discussed the possibilities of securing new drivers. Gilbert Moyle's testimony concerning this conference is somewhat different. He testified at first that Henry Moyle recited that the matter had been discussed with Sheets "and that it would be absolutely necessary to discharge the drivers." Later on cross-examination he testified:

Q. Now, it is true, is it not, that the decision to discharge the drivers had already been made by Mr. Moyle before he arrived here—
Mr. Henry Moyle? A. No, I think not.

Q. The decision wasn't made——

A. If he had, he didn't tell me about it.

He testified finally with respect to this issue:

Q. Touching the decision to discharge the drivers, concerning which you have been questioned, when Henry Moyle came up from Salt Lake City, state whether or not you were informed that that decision to discharge the drivers had already been made by Mr. Moyle and Mr. Sheets? A. I think that it had.

Q. So you were simply advised——

A. I was advised to discharge them, and I went ahead and did so.

Copenig's testimony concerning this meeting on November 13 is more explicit concerning the fi-

nality of discharge allegedly determined upon the day before. He testified that Henry Moyle informed him that in order for the respondent to secure insurance it was necessary to discharge the old drivers and that this determination was made on the afternoon of November 13.

Thus it is by no means clear, based upon the testimony of the respondent's own witnesses, when the decision to discharge was made and by whom. According to Copenig, it was made on November 13. Indeed, it seems hardly likely that Sheets and Henry Moyle, knowing as little as they did of the actual plant operations and personnel problems, would have come to such a major and final decision without consulting Gilbert Moyle. The undersigned believes, and finds, that the actual decision to discharge, together with means of executing the decision, was made the afternoon of November 13 at Pocatello, and not on November 12 in Sale Lake City.

In reaching this decision on November 13 and thereafter in carrying it out, neither Gilbert Moyle, Copenig, nor Rice made effort to retain in the respondent's employ those drivers whose records were beyond reproach. The discharges were made throughout the day of November 14 in the following manner: About 9 o'clock in the morning Rice telephoned all the drivers at their homes and asked them to report to the plant. Even at this hour, Evans had a premonition that the drivers were to be discharged and he so informed Merrill. The

drivers who were in Pocatello at the time and had been called by Rice, reached the plant between 9:30 and 11:30 a. m. The men waited around the yard until 11:45 a. m., when they were issued their checks and told of their discharge because of the policy cancellation and that the respondent was hiring new drivers. The drivers who were not in town that morning were informed of their discharge later that afternoon and evening on their return to the plant from their out-of-town trips. All drivers later received separation notices which stated that their services were "terminated due to reorganization made necessary by cancellation of insurance." The respondent gave no explanation for discharging the men on November 14 instead of November 15, the end of the regular pay period.

The day of the discharges was the day the Union presented its proposed contract. The Union's committee, with the *assistant* of Brandt and Rosqvist, drafted a proposed contract and the committee agreed that Brandt and Rosqvist would present it to the respondent. A. C. Thompson, who was employed by the Pocatello Central Trades and Labor Council, testified that he accompanied Brandt to the respondent's office; that they arrived there about 10:15 or 10:20 and departed, after a brief conference with Copening and Gilbert Moyle, 20 or 25 minutes later.²⁶ The only issue in dispute as it affects the present discussion is the time Brandt and Thompson

²⁶The substance of this conference as it affects the allegation that the respondent refused to bargain is considered hereafter.

reached the respondent's office. Copening testified they arrived at 11:30 a. m. and that while they were in his office he time-stamped the submitted contract. The time stamp indicates the contract was stamped at this hour. Gilbert Moyle fixed the time of their arrival as "around noon" and testified that all the drivers' checks had already been made out and a great part distributed before their arrival. Aside from this conflict, this much is clear: (1) the in-town drivers were called by Rice around 9 o'clock to report to the plant; (2) nothing was said at the conference by Copening or Moyle to Brandt and Thompson about the discharge of the drivers; and (3) the submission of the contract confirmed what Ayers had told Rice that the Union was demanding \$185 a month for the regular drivers.

After receiving his check on November 14, Evans saw Gilbert Moyle and requested a letter of recommendation. He was told that he had been ordered discharged by the Insurance Company and was referred to Copening. Although Moyle denied this, his denial cannot be credited for the following reason: Sometime thereafter, Evans went to Salt Lake City to see Little and there explained that the drivers were unable to obtain work because the Insurance Company had effected their discharge. On December 18, Little wrote Evans that, in cancelling the policy, the Insurance Company had "never requested the discharge of any drivers."

Reference has been made previously to the questions concerning union membership asked of Trevor

Moss and Merlin Bowman on November 15 and 16 when they were hired as new drivers, and to Sheppard's conversation with Williams at Boise concerning the Union membership of drivers in that plant. Moss had some difficulty with one of the discharged drivers in December. Hearing of this, Rice cautioned Moss to avoid associating with these men in order to prevent an further unpleasantness. Moss testified that Rice remarked, "Some of the fellows are under the impression that you are just working here temporarily, . . . You have a job as long as you go ahead and do your work . . . Those sons of bitches are never going to drive out here again." Rice admitted that he cautioned Moss to avoid the discharged drivers but denied the other remarks imputed to him by Moss. The undersigned accepts Moss' testimony and finds Rice did make these statements. Rice hired all the new drivers and, by November 20, had a full crew of 18 men. Whereas the discharged men had received \$160 a month, the new drivers were paid \$175 a month, \$10 less than the Union was demanding.

One day in December 1941, Evans had gone to the plant and was engaged in a friendly conversation with Foreman Henninger on the loading dock. Henninger remarked that it was unfortunate that the drivers had been discharged because the insurance had been cancelled. Evans replied that the discharge was not caused by the cancellation of the policy but because the drivers had joined the Union. He testified further that Henninger "kind of hung his head and studied a little bit, and he said, 'Well,

maybe you are right.' He said 'I knew you fellows belonged to the union a long time before you were fired.' " Henninger admitted that he had a conversation with Evans in December and that he made the remark "that it was too bad that the insurance was cancelled and that the boys were all thrown out of work." He testified further as follows:

Q. At the time you made that comment, I will ask you whether or not Mr. Evans said in substance or effect that you knew better, that they were fired because they belonged to the union, to which you said,—hung your head and said, "Maybe you are right?"

A. I might have made that remark, but I never hung my head and said "You might be right." I thought Johnny knew me better than that.

Q. Did you make any comment that Evans might be right? A. No, sir.

The undersigned finds that Henninger made these remarks to Evans. R. E. Miller, one of the drivers discharged on November 14, was rehired as a driver on March 10, 1942. He testified that about March 13 he had a conversation with Rice. He testified as follows concerning this conversation:

A. Well, he merely told me that in case I had anything to talk over, to come in and sit down and they would be glad to listen to me and also that during that meeting in July—I didn't attend—but he told me that it was agreed that if that wasn't enough money the drivers were to

come and notify the office, and he was satisfied that if they had, the office would have done something about the wage scale.²⁷

Q. Did Mr. Rice mention anything about the Union directly or indirectly?

A. Well, he merely stated that if the drivers had come to the office instead of going uptown—I believe that was his words.

Q. If they had done that they would still have their jobs?

A. He didn't say their jobs, he just said they would be working now, as nearly as I remember it.

Rice denied Miller's testimony. Miller was a credible witness and appeared to make every effort to confine his remarks to the truth. The undersigned accepts his testimony and finds that Rice made the remarks attributed to him by Miller.

Offers of reemployment to the discharged drivers

On December 14, 1941, Henninger offered Whitesides a job on the loading dock loading trucks with gasoline at 60 cents an hour for a 40-hour week, with time and a half for overtime. The next day, Whitesides informed Henninger that the Union did not care to have him accept this position. Between February 11, 1942, and June 19, 1942, Whitesides was reemployed in the respondent's warehouse.

²⁷The meeting referred to is the one held in June 1941, when the drivers were informed by Gilbert Moyle that they would be put on a monthly wage of \$160.

Similar jobs were offered to Evans, Cornia, and Miller on December 15. The men refused the jobs on the advice of the Union. But on March 11, 1942, Miller was rehired as a truck driver. On December 18, Henninger offered Brower a position on the loading dock, which he accepted on December 20, working until February 20, 1942. When Brower quit his job it was offered to Burkholder but he refused because he obtained a position elsewhere as a truck driver.

Assuming that Henninger's estimate of 8 to 20 hours overtime per week on the loading dock is accurate, the men would have averaged on the basis of a 40-hour week with time and a half for overtime approximately the same earnings per month as they had made as truck drivers. It is clear, however, that this was not an offer of an equivalent job, and by Henninger's own testimony he admitted that nothing was said to any of the truck drivers about the restoration of any of the previous privileges they had enjoyed. He admitted that they were to start on the loading dock as new employees. It is clear from the testimony of Evans and Miller that in the opinion of the Union the jobs offered to the drivers on the loading dock were not the equivalent of those they formerly held as truck drivers and for that reason the Union did not want them to accept Henninger's offer.

Concluding findings

Although all of the respondent's officers denied knowledge of the drivers' union membership, their

denials are hardly credible in view of the extensive course of union activity, the findings heretofore made and facts now to be recited. Between the renewal of the policy in August, and notice of cancellation on November 10, the drivers at Pocatello were engaged in their efforts to organize the Union. In September and October, Evans disclosed his union membership to service station operators along the road, handling the respondent's products.²⁸ It seems reasonably clear that by November 1, all of the drivers operating out of Pocatello, except K. C. Brower,²⁹ had either signed applications, paid partial initiation fees, or joined the Union. On or about November 1, the respondent's drivers at a meeting in the Pocatello Labor Temple appointed a committee consisting of Evans, Chairman, Leonard Fowler, and P. P. Stanger, to draft an agreement to be presented to the respondent. This committee assisted by Brandt and Rosqvist drafted a proposed contract covering working conditions and rates of pay. On November 13, as heretofore found, Rice stated to Ayers that "he [Rice] . . . heard the boys joined the union," and Ayers informed Rice of the

²⁸There is hearsay evidence upon which the undersigned makes no finding that Gilbert Moyle and Copenig learned from service station operators that drivers Merrill and Whitesides had boasted of their union membership and how tough they were going to make it for the respondent.

²⁹According to Ayers and Evans, Brower had not joined the Union. Brower was however discharged along with the drivers.

terms of the Union's proposed contract that had been prepared. As hereinafter appears, the contract was not submitted to the respondent until the morning of November 14. In December 1941, Henninger told Evans that he too, knew of the drivers' union membership long before they were fired. Gilbert Sheets, the respondent's president, received daily reports from the plant and visited Pocatello once a month. Henry D. Moyle, also received daily reports from the refinery and made frequent visits to Pocatello and testified that he "knew from day to day and week to week and month to month what was transpiring." Thus, to credit denials of union knowledge on the respondent's part, would be to ignore facts and circumstances that point overwhelmingly to the contrary. The undersigned therefore finds that the respondent knew or believed that all of its drivers at Pocatello had joined the Union.

In evaluating the good faith of the respondent, consideration has been given to the fact that all drivers, including those who the respondent knew were never in accidents, were discharged. It is pertinent also to consider its failure to discharge its other drivers whose accidents contributed to the loss ratio. As heretofore mentioned, the insurance policy covered the automobile equipment of Covey and Idaho. Four of their drivers, Crawshaw, White, Zollman, and Conrad were not discharged, and had been involved in four or five accidents, included in the losses upon which the Insurance Company based

cancellation.³⁰ While it may be true as the respondent asserts that it did not discharge any Covey drivers, because these men did not drive transport trucks, this does not appear to be the fact in the case of all Idaho drivers, especially those who worked under Sheppard's orders at Boise, four of whom at least, were engaged in the bulk haul of gasoline. Two of these drivers, Pearson and Zollman had accidents resulting in substantial losses that contributed to the insurance cancellation. Sheppard could have discharged them at the time of their accidents or on November 14, had the respondent so ordered.

The only reasonable inference that can be drawn from this equivocal course of conduct is that the respondent's given reason for the discharge of the Pocatello drivers, was not the true reason. The undersigned so finds.

From the foregoing, the undersigned finds that the respondent knew or believed that all the individuals listed in Appendix A had become members of the Union and the Machinists; that on November 14 the respondent discharged the said individuals because of this knowledge or belief of their membership in or activity on behalf of the Union, and in the case of Archibald for his activities on behalf of

³⁰In answer to any possible contention that these accidents involved a small total loss, there is the testimony of Little that cancellation was based upon accident frequency as well as excessive loss ratio.

the Machinists or his activities on behalf of the Union.

The undersigned finds that by thus discharging the employees listed in Appendix A, the respondent discriminated in regard to their hire and tenure of employment, and thereby discouraged membership in the Union and the Machinists, and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Wayne Douglas

Douglas started to work for the respondent in January 1940. He was thereafter laid off and re-hired about August 1941 by Kermit Rice, and worked at Baker, Oregon. The drivers at Baker were engaged in the bulk haul of gasoline from Umatilla, Oregon and Attalia, Washington, to Baker and Boise, Idaho.

In September, Douglas was transferred to Pocatello where he engaged in the same sort of work as the other drivers. On September 29, Douglas signed an application card in the Union stating thereon that he was employed at the respondent's plant in Pocatello. The finding heretofore made that the respondent knew or believed its Pocatello drivers had joined the Union is equally applicable to Douglas. Sometime thereafter Douglas was sent back to Baker. On October 16, Douglas was involved in a serious accident at Weiser, Idaho, for which he was apparently responsible. He resumed work on October 29 and worked continuously thereafter down to November 20, 1941. Although Gil-

bert Moyle testified that he instructed foreman Stiff to discharge Douglas because of the Weiser accident, it is clear, as indicated above from the respondent's own records, that Douglas was not discharged and resumed work after the accident.

Douglas testified that on November 20 Mrs. Stiff instructed him "not to pull any more trips, and not to ask any questions." This testimony is not contradicted. On either November 21 or 22 Douglas went to Pocatello to inquire about his status and saw Gilbert Moyle and Copening in the refinery office. Douglas testified that he was told that he was discharged for the same reason as the other drivers, "on account of the insurance was cancelled." He testified further that Gilbert Moyle showed him the telegram that had been received from the insurance company effecting cancellation of the policy.

The respondent urges that the discharge of Douglas had no connection with that of the other drivers on November 14, and that it bore no relationship to the cancellation of the insurance policy, but rather that Douglas was discharged for his Weiser accident on October 16. This seems hardly credible in view of the undisputed testimony and the respondent's own pay-roll records indicating that Douglas resumed employment on October 29 and worked continuously until November 20. Gilbert Moyle testified that he instructed Stiff to discharge Douglas on October 16; that he was subsequently discharged on October 17 or 18; that he learned about November 16 or 17 that Douglas was still on the payroll;

and "that finally Mr. Stiff concluded that for the best of the service", to "let him go". On cross-examination Moyle testified that he did not know Douglas had resumed work on October 29; that he first discovered this on examination of the Baker payroll on November 21, and that he had no further conversation with Stiff about Douglas. Stiff did not testify and the respondent offered no explanation for its failure to call Stiff to corroborate Moyle's testimony that Douglas had been discharged on October 17, or 18, or to explain why Douglas resumed work on October 29. Moyle's testimony is indecisive, not clear or convincing and in the absence of corroboration by Stiff does not convincingly explain Douglas' discharge five weeks after the accident. Copening testified that when Douglas reported to Pocatello he was informed that he was discharged because of the Weiser accident. When asked if he told Douglas that he was discharged for the same reason as the other drivers, he replied, "I don't recall that statement. I would say that I did not make the statement." When asked again if he told Douglas that he was discharged because of the Weiser accident, he replied, "As I recall I think that I did, yes." Gilbert Moyle admitted that he saw Douglas at the plant on either November 21 or 22, but denied that he talked to Douglas or showed him the telegram.

It may be conceded that the Weiser accident on October 16 would be a sufficient justification for the discharge of Douglas either at that time or on November 21. But if the discharge occurring

more than five weeks after the accident was in any proximate degree motivated by Douglas' union membership it was a discriminatory discharge under the Act. This is the undersigned's conclusion and for the following reasons: (1) Douglas was the only member of the Union at Baker, Oregon; (2) he joined the Union in Pocatello and associated with the other drivers; (3) the respondent's assertion that Douglas was ordered discharged on October 16 is hardly credible in view of his continued employment thereafter; and (4) the respondent's asserted reason that Douglas was discharged because he was the only Baker driver involved in an accident has no validity when consideration is given to the fact that Pocatello drivers who did not have accidents but who belonged to the Union were discharged.

The undersigned therefore finds that the respondent discharged Douglas because of his union membership or activity and in so doing discriminated in regard to his hire and tenure of employment thereby discouraging membership in the Union and interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

D. The refusal to bargain collectively

1. The appropriate unit

The consolidated complaint alleged that "the employees of the respondent employed as truck drivers, excluding the truck foreman, constitute * * * a unit appropriate for the purposes of collective

bargaining * * *.''' The respondent in its answer denied the appropriateness of the unit as alleged but did not offer any testimony in support of its denial. All of the drivers employed at Pocatello perform essentially the same services and are paid the same salary. Prior to November 1941, they received \$160 a month. The drivers compose a compact and cohesive unit, take their orders from Rice and Henninger, and, except on the limited occasions when some of the drivers are engaged in the plant clean-up, confine their duties to the hauling of the respondent's petroleum products. The drivers are under bond and are charged at times with the responsibility for the collection of monies owed the respondent by its customers. On November 1, 1941, there were 19 drivers at Pocatello, excluding the foreman, all of whom were eligible to join the Union.

The undersigned finds that the employees engaged in the driving of the respondent's transportation trucks at Pocatello, excluding the foreman, constituted at all times material herein, and that they now constitute, a unit appropriate for the purposes of collective bargaining with respect to wages, rates of pay, hours of employment, and other conditions of employment, and that the said unit insures to employees of the respondent the full benefit of their right to self-organization and to collective bargaining and otherwise effectuates the policies of the Act.

2. Representation by the Union of a majority in the appropriate unit

Employees in the unit above found appropriate became interested in the Union in the summer of 1941. By September 29, ten of the employees on the respondent's pay roll had signed applications in the Union. By October 21 seven additional drivers had signed application blanks. In addition, two drivers signed applications which were undated. Robert W. Patterson, who signed an application on September 29, was discharged for cause on or about November 5 and the Union makes no contention with respect to his discharge. Disregarding the two undated application blanks and the application of Patterson and that of Douglas who had been transferred, the Union on October 21 had at least 15 signed applications for membership among the 19 drivers in the appropriate unit. By October 27, 17 of the 19 drivers, excluding Patterson and Wayne Douglas, had paid all or part of their initiation fees in the Union.

On January 16, 1942, the charter of Local No. 440 of the Union in which the drivers had signed applications and paid their initiation fees, was revoked on instruction of Daniel J. Tobin, president of the International Union, and a new charter installed for Local No. 983 as its successor. Lee Owens succeeded Brandt as business agent of the Union and all records of Local No. 440 were turned over to Owen. Although Owen, in testifying, could not identify the signatures on the application, he stated as a matter of personal knowledge that 11

of the drivers were members of the Union. In addition, six drivers, including four named by Owen, identified their signatures on the applications, which were in evidence. The respondent and the Association offered no evidence that the signatures on the applications were not genuine.³¹ The Union undertakes to bargain for those who have signed its applications. It is well established that the signing of an application for membership in a labor organization in itself constitutes a designation of that organization as a bargaining agent.³²

The undersigned finds that on November 14, 1941, and at all times thereafter, the Union was the duly designated representative of a majority of the employees in the appropriate unit, and that, by virtue of Section 9 (a) of the Act, it was the exclusive representative of all of the employees in the unit for the purposes of collective bargaining.

3. The refusal to bargain

On November 14, 1941, Brandt, business agent of the Union, presented the Union's contract to the

³¹In *N.L.R.B. v. Somerset Shoe Co.*, 111 F. (2d) 681 (C.C.A. 1), the court placed on the respondent the burden of going forward with evidence to challenge the authenticity of designation signatures "which could reasonably have been checked against the signatures of the employees on respondent's pay roll."

³²*N.L.R.B. v. Sunshine Mining Co.*, 110 F. (2d) 780 (C.C.A. 9), cert. den. 312 U. S. 678; *N.L.R.B. v. Chicago Apparatus Co.*, 116 F. (2d) 753 (C.C.A. 7).

respondent at a conference which was attended by Gilbert Moyle and Copening on behalf of the respondent. The terms of the contract were not discussed by the parties and Brandt suggested that the parties meet the following week to continue negotiations. This was agreeable to the respondent. Copening stated that he would in the meantime refer the Union's contract to Henry D. Moyle for study. As indicated heretofore, nothing was said during the conference about the discharge of the drivers which had occurred that morning and Brandt was without knowledge of this fact. On the afternoon of November 14 all of the discharged drivers who were in Pocatello held a meeting at which they appointed John Evans to accompany Rosqvist and Brandt to the next conference with the respondent.

On Friday morning, November 21 Brandt and Rosqvist accompanied by Evans returned to confer with the respondent. Present at the meeting on the respondent's behalf were Henry Moyle, Gilbert Moyle, Copening, and Peterson. Brandt started the conference by stating that either he or the committee represented the Union; that they were present to discuss the submitted contract and to seek reinstatement of the discharged drivers. Henry Moyle, the respondent's spokesman, replied that he did not know Brandt or Rosqvist and demanded proof of the committee's authorization to represent the Union. With respect to the genuineness of Moyle's first statement, it is clear beyond any doubt that Gilbert Moyle, Copening, and Pe-

terson knew who these men were and who they represented and why they were there. Copenig acknowledged this at the hearing. In response to Moyle's demand for proof of authorization, Brandt replied that he represented 52 percent of the drivers but refused to divulge their names or submit any proof to substantiate his assertion. It must have been reasonably clear to the respondent's representatives that the committee purported to represent only the Union. Henry Moyle had seen the proposed union contract and must have known by reading it that the Union sought to bargain only for the respondent's drivers. Moyle wanted evidence of the committee's "right to bargain for the employees of the refinery" and stated that the respondent had a contract with the Association covering the employees and that this agreement would prevent any negotiations with the Union unless its authority was established.³³ Moyle testified that he had the impression that the committee sought to bargain "for all of the employees." That any such impression could have been reasonably entertained is difficult to believe in view of the committee's personnel and the explicit language of the

³³The existence of a contract with an employer-dominated organization affords no justification for an employer's refusal to bargain collectively with a bona fide labor organization which is the duly designated representative of the majority of its employees in an appropriate unit. See *N.L.R.B., v. Bradford Dyeing Association*, 310 U. S. 318; *N.L.R.B., v. Wm. Tehel Bottling Company*, 129 F. (2d) 250, (C.C.A. 8).

submitted contract which sought to include "road drivers, city pick-up drivers, loaders, and checkers and other employees . . . properly coming under the jurisdiction" of the Union. Toward the close of the conference the suggestion of an election to determine representation arose but it is not clear from the evidence whether the suggested election was to be a contest to determine the right of the Union and the Association to represent all employees or restricted to the drivers only. No agreement was reached regarding this. Evans admitted while testifying, that Moyle stated he would bargain upon presentation of proper authority but the committee failed to present proof of majority designation. The respondent gave no reply to the committee's request for reinstatement of the drivers. The conference concluded by Brandt's stating that if the respondent would not recognize the Union, charges would be filed.

Regardless of the Union's refusal to present proof of its majority it is clear that an employer who undermines by means of unfair labor practices, including the discharge of all union members in the appropriate unit, the majority designation of the Union seeking to bargain collectively, cannot thereafter excuse his failure to bargain on the ground that the Union failed to reveal its majority. As fully described above, the respondent had completed its campaign to destroy the Union. Its conduct had plainly placed in jeopardy the majority status of the Union and indicated its bad faith in demanding proof of a majority. Under the cir-

circumstances, the refusal of the Union to furnish this proof or enter an election to test its strength at that time was not unreasonable.³⁴ The undersigned concludes and finds that no question with respect to the majority status of the Union or the contract with the Association excused the respondent's failure to negotiate with the Union on and after November 21, 1941. Such conduct coupled with the respondent's destruction of the Union's majority by the discharges, constituted a refusal to bargain with the duly designated representative of its employees in an appropriate unit, and was an unfair labor practice within the meaning of the Act.

Accordingly, the undersigned finds that on and after November 21, 1941, the respondent refused to bargain collectively with the Union as the exclusive representative of its employees within an appropriate unit, in respect to rates of pay, wages, hours of employment, and other conditions of employment, and that the respondent thereby interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. The effect of the unfair labor practices upon commerce

The undersigned finds that the activities of the respondent set forth in Section III above, occur-

³⁴Cf. *Matter of Chicago Apparatus Company and Federation of Architects, Engineers, Chemists and Technicians, Local 107*, 12 N.L.R.B., 1002, enf'd N.L.R.B., v. *Chicago Apparatus Co.*, 116 F. (2d) 753 (C.C.A. 7).

ring in connection with the operations of the respondent described in Section I above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that the respondent has engaged in and is engaging in unfair labor practices, the undersigned will recommend that it cease and desist therefrom and take certain affirmative action in order to effectuate the policies of the Act.

The undersigned has found that the respondent has dominated and interfered with the formation and administration of, and has contributed support to the Association. The effects and consequences of the respondent's domination, interference with, and support of the Association, as well as the continued recognition of the Association as a bargaining representative of its employees, constitutes a continuing obstacle to the free exercise by its employees of their right to self-organization and to bargain collectively through representatives of their own choosing. Because of the respondent's illegal conduct the Association is incapable of serving the respondent's employees as a genuine collective bargaining agency. Accordingly, the undersigned will recommend that the respondent disestablish and withdraw all recognition from the Association as representative of any of its employees for the purpose of dealing with it concerning grievances, labor disputes, wages,

rates of pay, hours of employment, or other conditions of employment.³⁵ The contract of June 1, 1942, between the respondent and the Association, which by its terms is still in effect, was and is part of the respondent's plan to frustrate self-organization and to defeat collective bargaining by its employees. Moreover, it provides for recognition of the Association as the representative of the respondent's employees, although at the time that the contract was entered into no proof was presented that the organization had been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining. The undersigned will therefore recommend that the respondent cease and desist from giving effect to this or any other contract with the Association respecting grievances, labor disputes, rates of pay, wages, hours of work, or other conditions of employment. Nothing in the recommendation that follows, however, shall be deemed to require the respondent to vary or abandon the wage rates or conditions of employment which the respondent may have established in conformity with the contract, as extended, renewed, modified, supplemented, or superseded.³⁶

³⁵See *National Labor Relations Board v. Link-Belt Co.*, 61 S. Ct. 358; *H. J. Heinz v. National Labor Relations Board*, 61 S. Ct. 320.

³⁶*National Licorice Co. v. National Labor Relations Board*, 309 U. S. 350, *enfd* as mod. *Matter of National Licorice Co. and Bakery and Confectionery Workers International Union of America, Local Union 405, Greater New York and Vi-*

The undersigned has found that the respondent has discriminated against the employees listed in Appendix A and Wayne Douglas, in regard to their hire and tenure of employment. The undersigned is of the opinion that, because of K. C. Brower's association and employment with the other drivers, the respondent concluded that he too was a union member and therefore discharged him in furtherance of its effort to discourage membership in the Union. By discharging Brower, the respondent indicated that it considered him to be in the same class and to merit identical treatment with the union members whom it also discharged. The undersigned will recommend therefore that the respondent offer to the employees listed in Appendix A and Wayne Douglas full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges, and make them whole for any loss of pay they may have suffered by reason of the respondent's discrimination against them by payment to them of a sum of money equal to the amount which they normally would have earned as wages from the date of the respondent's discrimination against them to the date of the offer of reinstatement, less their net earnings,³⁷ during said period.

cinity, 7 N.L.R.B. 537; *National Labor Relations Board v. Stackpole Carbon Co.*, 105 F. (2d) 167 (C.C.A. 3), *enf'g as mod.* 6 N.L.R.B. 171, *cert. den.* 308 U. S. 605.

³⁷By "net earnings" is meant earnings less expenses, such as for transportation, room, and board, incurred by an employee in connection with obtain-

Having found that the respondent refused to bargain collectively with the Union, the undersigned will, therefore, recommend that the respondent, upon request, bargain collectively with the Union as the duly designated representative of the employees in the unit found appropriate, with respect to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment.

Upon the basis of the foregoing findings of fact and upon the entire record of the case, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, was, and its successor No. 983, affiliated with the American Federation of Labor; International Association of Machinists, Local No. 198, affiliated with the American Federation of Labor; and Idaho Refining Company Employees' Benefit and Labor Association are, la-

ing work and working elsewhere than for the respondent, which would not have been incurred but for his unlawful discharge and the consequent necessity of his seeking employment elsewhere. See Matter of Crossett Lumber Company and United Brotherhood of Carpenters and Joiners of America, Lumber and Sawmill Workers Union, Local 2590, 8 N.L.R.B. 440. Monies received for work performed upon Federal, State, county, municipal, or other work-relief projects shall be considered as earnings. See Republic Steel Corporation v. N.L.R.B., 311 U. S. 7.

bor organizations within the meaning of Section 2 (5) of the Act.

2. By interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

3. By dominating and interfering with the formation and administration of the Association, and contributing support to it, the respondent has engaged and is engaging in unfair labor practices within the meaning of Section 8 (2) of the Act.

4. By discriminating in regard to the hire and tenure of employment of the employees listed in Appendix A, and Wayne Douglas thereby discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, the respondent has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

5. The respondent's truck drivers at Pocatello, excluding the foreman, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the Act.

6. Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440, was on November 14, 1941, and at all times thereafter until January 16, 1942, and Local No. 983 thereafter has been, the exclusive representative of all of the employees in such

unit for the purposes of collective bargaining within the meaning of Section 9 (a) of the Act.

7. By refusing on November 21, 1941, and at all times thereafter, to bargain collectively with Local No. 440 and therewith its successor Local No. 983 as the exclusive representative of all its employees in such unit, the respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act.

8. The aforesaid labor practices are unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act.

RECOMMENDATIONS

Upon the basis of the above findings of fact and conclusions of law the undersigned recommends that the respondent, Idaho Refining Company, Pocatello, Idaho, and its agents, officers, successors, and assigns, shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of the Association, or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Association, or to any other labor organization of its employees;

(b) Giving effect to or performing the contract of June 1, 1942, with the Association, or any extension or renewal thereof, or any other agreements, understandings, or arrangements entered into with the Association, respecting rates of pay, wages,

hours of work, or other conditions of employment;

(c) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discouraging, laying off, or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment;

(d) Refusing to bargain collectively with Local Union No. 983 of Teamsters Chauffeurs, Warehousemen and Helpers, affiliated with the American Federation of Labor, as the exclusive representative of the drivers at Pocatello, excluding the foreman, in respect to rates of pay, wages, hours of employment, and other conditions of employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the undersigned finds will effectuate the policies of the Act:

(a) Completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the respondent concerning

grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment;

(b) Withdraw all recognition from the Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment, and completely disestablish the Association as such representative;

(c) Offer to the employees listed in Appendix A and Wayne Douglas immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(d) Make whole the employees listed in Appendix A and Wayne Douglas for any loss of pay they may have suffered by reason of the respondent's discrimination against them, by payment to each of them of a sum of money equal to that which he normally would have received as wages from the date of the respondent's discrimination against him to the date of the respondent's offer of reinstatement, less his net earnings,³⁸ during said period;

(e) Upon request, bargain collectively with Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, affiliated with the American Federation of Labor, as the exclusive representative of the respondent's truck drivers at Pocatello, excluding the foreman, in respect to rates of pay, wages, hours

³⁸See footnote 37, above.

of employment, and other conditions of employment;

(f) Post immediately in conspicuous places in its plant at Pocatello, and on the premises occupied or used by the respondent at Boise, Idaho, and Baker, Oregon, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating: (1) that the respondent will not engage in the conduct from which it is recommended that it cease and desist in paragraphs 1 (a), (b), (c), (d) and (e) of these recommendations, (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c), (d), and (e) of these recommendations; and (3) that the respondent's employees are free to become or remain members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(g) Notify the Regional Director for the Nineteenth Region in writing within ten (10) days from the date of the receipt of this Intermediate Report what steps the respondent has taken to comply therewith.

It is further recommended that unless on or before ten (10) days from the date of the receipt of this Intermediate Report, the respondent notifies said Regional Director in writing that it will comply with the foregoing recommendations, the Na-

tional Labor Relations Board issue an order requiring the respondent to take the action aforesaid.

As provided in Section 33 of Article II of the Rules and Regulations of the National Labor Relations Board, Series 2—as amended—effective October 14, 1942, any party may within fifteen (15) days from the date of the entry of the order transferring the case to the Board, pursuant to Section 32 of Article II of said Rules and Regulations, file with the Board, Shoreham Building, Washington, D. C., an original and four copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceedings (including rulings upon all motion or objections) as he relies upon, together with the original and four copies of a brief in support thereof. As further provided in said Section 33, should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days after the date of the order transferring the case to the Board.

MORTIMER RIEMER,

Trial Examiner.

Dated: October 20, 1942.

[Printer's Note: "Appendix A" here attached is identical with "Appendix A" attached to the Decision and Order, at page 64 of this printed record.]

[Title of Board and Causes.]

AFFIDAVIT AS TO SERVICE

District of Columbia, ss:

I, Jack McCaleb being first duly sworn, on oath saith that I am one of the employees of the National Labor Relations Board, in the office of said Board in Washington, D. C.; that on the 27th day of February, 1943, I mailed postpaid, bearing Government frank, by registered mail, a copy of the Decision and Order (dated February 25, 1943) and Intermediate Report to the following named persons, addressed to them at the following addresses:

69355

Teamsters, Chauffeurs, Warehousemen and
Helpers, Local No. 983, A.F. of L.

Att: Lee W. Owen, Secy. Treas.

140 South First Ave.

Pocatello, Idaho

69356

International Association of Machinists,
Local No. 198, A.F. of L.

Att: Zenos F. George, Recording Secy.

316 North 9th Avenue

Pocatello, Idaho

69357

Mr. Herbert Thatcher

738 Bowen Bldg., Wash., D. C.

69358

Idaho Refining Company

Pocatello, Idaho

69359

Messrs. Henry D. Moyle and David L. McKay
720 Newhouse Bldg.
Salt Lake City, Utah

69360

Mr. A. L. Merrill
Carlson Bldg.
Pocatello, Idaho

69361

Idaho Refining Co. Employees' Benefit and
Labor Association
Att: Delmar R. Peters
720 E. Oak, Pocatello, Idaho

69362

International Association of Machinists
Att: Paul R. Hutchings
Machinists Bldg.
Washington, D. C.

JACK McCALEB.

Subscribed and sworn to before me this 27th day
of February, 1943.

[Seal]

JOHN E. LAWYER,

Notary Public, D. C.

My commission expires Aug. 31, 1944.

(Return Card Receipts for above Registered Mail
Attached.)

[Title of Board and Causes.]

STATEMENT OF EXCEPTIONS OF IDAHO
REFINING COMPANY TO THE INTER-
MEDIATE REPORT AND TO RULINGS
OF THE TRIAL EXAMINER

I.

Respondent, Idaho Refining Company, takes exceptions to all adverse findings, conclusions and recommendations made by the Trial Examiner in the Intermediate Report filed in the above matter of October 22, 1942, more particularly as follows:

1. Excepts to the finding and conclusion that Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 is a successor to Local No. 440, and that Local 983 had a right to bargain with the Respondent, because there is no substantial evidence to support either such finding or conclusion.

2. Excepts to the conclusion recited on page 4 of the Report to the effect that "the relationship between the three corporations above referred to is such, and the officers of the respondents have so acted, as to constitute the respondent an employer within the meaning of that term as used in the Act, of employees of Covey and Idaho," upon the ground that the evidence fails to support such conclusion.

3. Excepts to that statement under Subdivision III entitled "Unfair Labor Practices" appearing on page 4 of the Report as follows: "In September, 1941, the drivers started to join the Union and by late October all but one had joined the Union. Their

Union membership was the subject of general discussion among respondent's other employees", upon the ground that the evidence fails to support said finding.

A. The Association

4. Excepts to the failure by the Trial Examiner to find, as proved by the evidence adduced, that the Association was a voluntary organization by its employees; that the respondent did not have any connection with the organization of said Association and asserted no influence of any kind or character upon its employees with respect to the organization or the control and management of the Association; that while some supervisors were members of the Association, yet they became members before their advancement and remained members thereafter for the purpose of maintaining sick benefits and other similar advantages of the Association.

5. Excepts to the failure of the Trial Examiner to find that the change house built on company property, which was constructed by the labor of members of the Association, constituted a contribution by the Association to the respondent in consideration of any privileges accorded the employees.

6. Excepts to the failure of the Trial Examiner to find that no supervisory employee who may have maintained membership in the Association ever acted or participated in any discussion or negotiation with the Respondent for collective bargaining on behalf of the Association.

7. Excepts to the conclusion on page 9 of the Report to the effect that the relationship between the Respondent and the members of the Association developed on the part of the employees reliance and dependence upon the employer rather than the labor organization as the employees' representative and that such was "revealed in this case by the overwhelming vote of confidence given the Association in the vote conducted on company property following the address of Rosqvist", and in further concluding "it can hardly be asserted that this vote afforded employees an opportunity to fairly consider the relative advantages and disadvantages of trade unions versus Association membership", more particularly because there is no substantial evidence supporting any such findings and conclusions and the same is based upon mere supposition and conjecture.

8. Excepts to the method of attempting to evaluate various asserted privileges of the Association without considering the contribution made by the members of the Association in labor for the construction of the Association hall, which, when properly considered and evaluated would lead to the reasonable conclusion that the members paid for all they received.

9. Excepts to the suggestion embodied in the recitation on page 9 of the Report to the effect that the Respondent was unduly lenient in the execution of the 1941 and 1942 agreements because such finding is not supported by any competent evidence.

10. Excepts to the finding on pages 9 and 10 of the Report to the effect that "the Respondent interfered with, supported and dominated the formation and administration of the Association; and that the Respondent, by such conduct, and by its entire course of conduct, interfered with, restrained and coerced its employees in the exercise of the rights of self-organization, to form, join or assist labor organizations to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining, as guaranteed by Section 7 of the Act", particularly for the reason that a fair consideration of all the evidence and the proper inferences that might be drawn therefrom completely fails to support any such finding.

B. Interference, Restraint and Coercion

11. Excepts to the Trial Examiner's finding that Gilbert Moyle made the statements attributed to him by McBride and Cornia set forth on page 10 of the Intermediate Report for the reason that it is contrary to the evidence and, if said, did not have the effect the Trial Examiner attributed to them.

12. Excepts to the finding on page 11 of the Report that Stiff told the drivers that Gilbert Moyle informed him that the drivers were not to discuss union affairs or associate with the Pocatello drivers in that capacity because it is based on incompetent and hearsay testimony.

13. Excepts to the finding on page 11 of the Report: (a) that Kermit Rice remarked that trade

union membership never benefited him; (b) that Rice told Ayers that he had heard Boyd Cornia had joined the union and inquired what it was the drivers wanted; and (c) that Rice asked Heckert whether he belonged to any union and said that it was O. K. that he did not and that Mr. Moyle was strictly against unions, because the same is in each instance not supported by the evidence, and is immaterial, and, if said, was an expression of the respondent and justified by the right of free speech.

14. Excepts to the finding on page 12 of the Report that Gilbert Moyle questioned Trevor Moss as to union membership and expressed approval of the Association as to respondent's own organization, because the same is not supported by the evidence and, if said, had no effect upon the employees.

15. Excepts to the finding on page 12 of the Report that Copening questioned Merlin Bowman concerning his union membership, because the same is contrary to and is not supported by the evidence and, if said, had no effect upon the employees.

16. Excepts to the finding on page 12 of the Report that W. A. Sheppard asked Williams whether Ray Pittman and Mervin Zollman were union members and said that if they had joined the union Sheppard would use two recent accidents as an excuse to fire them, because the same is not supported by the evidence and, if said, had no effect upon the employees.

17. Excepts to the finding and argument of the Trial Examiner on page 12, line 60, et seq. and at

the top of page 13 of the Report that a controversy existed between the employees and the employer over the former's rights to self-organization, because the same is not supported by any substantial evidence.

18. Excepts to the failure of the Trial Examiner to find in accordance with the evidence, that the Respondent used union labor whenever available; that it constructed its asphalt plant, boiler house, heating unit, additions to its office building and other improvements with union labor; that it employed various men who were known to be union men, such as McBride, Rice, R. E. Miller, Guy Campbell and the river drivers and others.

19. Excepts to the conclusion on page 13 of the Report that the Respondent, through its agents, by interrogating employees about the union and union activities, by expressing a preference for the Association as its own organization, by threatening directly or indirectly employees with termination of employment because of membership or activity in the union which it opposed, and by the totality of such conduct and action, interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act. Said conclusion is not supported by proper findings nor based upon a fair consideration of all of the evidence and is unsupported by competent evidence adduced.

C. Discriminatory Discharges.

Archibald.

20. Excepts to the finding on page 13 of the Report that the denials of Rice and Gilbert Moyle are unworthy of belief and that there is a fair surmise that Rice, at least, was aware of Archibald's union membership.

21. Excepts to the reference on line 50 et seq. on page 13 of the Report that knowledge of Archibald's union activities came to the notice of higher management officers, because there is no evidence to support such inference.

22. Excepts to the finding on page 15 of the Report that it is reasonably apparent that resurrection of various incidents of Archibald's misconduct was an attempt to justify his discharge in retrospect and did not motivate his dismissal.

23. Excepts to the finding on page 15 of the Report that the underlying motive and real cause for the Respondent's discharge of Archibald on November 14th is found in his union activities and the membership of the drivers with whom he was so closely identified, because the same is not supported by competent evidence, but is contrary thereto.

24. Excepts to the finding on page 15 of the Report that Archibald was discharged because of his union membership, more particularly his activity in behalf of the union, and because of his close association with its members, and that by thus discharging Archibald the Respondent discriminated in regard to his hire and tenure of employment and thereby

discouraged membership in the Machinists and the Union and interfered with, restrained and coerced its employees in the exercise of rights guaranteed under Section 7 of the Act, particularly because there is no substantial evidence supporting such finding and the evidence is without substantial conflict proving the reason for the discharge was his misconduct, which had nothing to do with union activities.

The Truck Drivers at Pocatello.

25. Excepts to the finding on page 18 of the Report that there is no evidence that any insurance company required as a condition to the issuance of a policy of insurance that the drivers employed prior to November 14, 1941, should be discharged, on the ground that such finding is irrelevant and immaterial and is contrary to the evidence.

26. Excepts to the comment on page 18 of the Report that there is no adequate explanation why the discharge of the drivers never involved in any accident would cause the Respondent's application for insurance to receive more serious consideration.

27. Excepts to the failure of the Trial Examiner to find that the officers of the company, Henry D. Moyle and Gilbert S. Sheets considered, determined and acted upon the subject of the discharge of said drivers on the 12th day of November, 1941 at Salt Lake City, Utah, and at said time thought they could not reasonably secure insurance to replace the insurance theretofore cancelled without a discharge of all of the drivers on its major unit from the Pocatello plant.

28. Excepts to the finding on page 19 of the Report that it is not clear when the decision to discharge the drivers was made and by whom, because the evidence is definite and without dispute that said decision was made at Salt Lake City on November 12, 1941, by the president and vice-president of the company.

29. Excepts to the finding on page 19 of the Report that the actual decision to discharge, together with means of executing the decision, was made on the afternoon of November 13th at Pocatello and not on November 12th at Salt Lake City, because the evidence fails to support said finding.

30. Excepts to the finding on page 19 of the Report that the witness Evans "had a premonition" that the drivers would be discharged.

31. Excepts to the finding on page 20 of the Report that Gilbert Moyle's denial that he told Evans the latter had been discharged by the insurance company cannot be credited, for the reasons there set forth.

32. Excepts to the finding on page 20 of the Report that Rice remarked to Trevor Moss: "Some of the fellows are under the impression that you are just working here temporarily . . . you have a job as long as you go ahead and do your work . . . those sons of bitches are never going to drive out here again," because the same is not supported by competent evidence and, if said, was after the discharge of drivers and is immaterial for any purpose.

33. Excepts to the finding on page 21 of the Report that Henninger made remarks to Evans therein set forth, because the evidence does not support said finding, and that if said remarks were made, they were after the discharge of the drivers and were immaterial.

34. Excepts to the recitation of a conversation between R. E. Miller and Kermit Rice on page 21 of the Report for the reason that the same is not supported by the evidence, and if said conversation was had it was immaterial and occurred after the discharge of the drivers.

35. Excepts to the conclusion on page 22 of the Report that the offer of work on the loading dock was not the offer of an equivalent job, for the reason that this is not sustained by the evidence but is contrary thereto.

36. Excepts to the finding on page 23 of the Report that there was an extensive course of union activities in and around the Respondent's property and that the denial of Respondent's officers of knowledge of drivers' membership *are* "hardly credible."

37. Excepts to the finding on page 23 of the Report that the Respondent knew or believed that all of its drivers in Pocatello had joined the union, because there is no competent or substantial evidence to support such finding.

38. Excepts to the finding on page 23 of the Report that drivers under Sheppard's orders at Boise were engaged in the bulk haul of gasoline because the same is immaterial and irrelevant, and

further excepts to the failure of the Examiner to find that many of the drivers of Idaho Gas and Oil Company were independent licensees and operators and had their own equipment.

39. Excepts to the finding on page 23 that drivers Pearson and Zollman were drivers engaged in the bulk haul of gasoline under Sheppard's orders, because the same is immaterial and irrelevant, and not supported by substantial evidence; and further objects to the finding that Sheppard could have discharged them at the time of their accident if the Respondent had so ordered, on the ground that there is no substantial evidence to support such finding.

40. Excepts to the finding on page 24 of the Report that the Respondent's given reason for the discharge of the Pocatello drivers was not the true reason, upon the ground that there is no substantial evidence supporting such a finding. The Respondent further excepts to the fact that the Trial Examiner overlooked much of the testimony which corroborates and fully substantiates the reason given by the Respondent for the discharge of the Pocatello drivers, and particularly the testimony of such witnesses as Decker Little, H. McKay Allen, R. S. Turner, H. E. Benson, Walter W. Watkins, and other witnesses called by Respondent hereinbefore mentioned, and Respondent's Exhibit No. 5, being a letter from David M. Sweeney.

41. Excepts to the finding on page 24 of the Report that the Respondent knew or believed that all individuals listed in Appendix "A" had become

members of the Union and the Machinists, because said finding is not supported by any substantial evidence.

42. Excepts to the finding on page 24 of the Report that on November 14th the Respondent discharged individuals listed in Exhibit "A" because of the knowledge or belief of their membership in or activities on behalf of the Union, and in the case of Archibald, for his activities on behalf of the Machinists or his activities on behalf of the Union, because said finding is not supported by any substantial evidence, and in failing to find that said drivers were discharged because of the cancellation of the insurance due to high loss ratio and numerous accidents on the part of the drivers and under the belief entertained by the officers of the Respondent that other insurance could not likely be obtained without a replacement of said drivers, and in the case of Archibald for his misconduct, drunkenness, absences without leave and other acts recited in the evidence justifying such discharge.

43. Excepts to the conclusion on page 24 of the Report that the Respondent, by discharging the employees listed in Appendix "A", discriminated in regard to their hire and tenure of employment, and thereby discouraged membership in the Union and the Machinists and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, because the conclusion is not based upon any proper or

competent finding and is unsupported by any substantial evidence.

Wayne Douglas

44. Excepts to the finding on page 24 of the Report that Respondent knew or believed that Wayne Douglas had joined the Union because said finding is not supported by substantial evidence.

45. Excepts to the Examiner's criticism of the Respondent for its alleged failure to call Stiff to testify, though no indication was given at the hearing that the Examiner desired to hear Stiff's testimony.

46. Excepts to the finding and conclusion on page 25 of the Report that the Respondent discharged Wayne Douglas because of his union membership or activities and in so doing discriminated in regard to his hire and tenure of employment, thereby discouraging membership in the union, and interfered with, restrained and coerced its employees in the exercise of the rights guaranteed under Section 7 of the Act, because the finding is not supported by any substantial evidence and the conclusion is not supported by any proper finding.

D.

Refusal to Bargain

47. Excepts to the finding on page 26 of the Report that the employees engaged in the driving of Respondent's transportation trucks, excluding the foremen, constituted at all times a unit appropriate for the purposes of collective bargaining with respect to wages, rates of pay, hours of em-

ployment and other conditions of employment, and that the same unit insures to employees of the Respondent the full benefit and right to self-organization and to collective bargaining and otherwise effectuates the policy of the Act.

48. Excepts to the failure of the Trial Examiner to find and to conclude that the officers of the Respondent were entitled to have Evans, Brandt or Rosqvist submit reasonable proof as to whom they purported to represent and their right to bargain for such employees, and that the failure of the said parties to submit said proof upon request by the officers of the Respondent so to do eliminated any complaint that the Respondent refused to bargain collectively.

49. Excepts to the statement on page 28 of the Report that the Respondent "had completed its campaign to destroy the union" and that it indicated its bad faith in demanding proof of a majority and that under such circumstances the refusal of the Union to furnish such proof or enter an election to test its strength at that time was not unreasonable, because said statements and conclusions are not supported by any substantial evidence.

50. Excepts to the finding and conclusion on page 28 of the Report that on and after November 21, 1941, the Respondent refused to bargain collectively with the Union as the exclusive representative of its employees with an appropriate unit in respect to rates of pay, wages, hours of employment and other conditions of employment,

and that the Respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed by Section 7 of the Act, upon the ground that there is no substantial evidence to support said finding and said conclusion is contrary to the facts proved.

The Remedy.

51. Excepts to the statements on pages 28 and 29 of the Report to the effect that the Respondent has dominated and interfered with the Association and the finding that such constitutes an obstacle to the free expression by its employees of the right of self-organization and collective bargaining, and that the contract of June 1, 1942 between the Respondent and the Association was part of the Respondent's plan to frustrate self-organization and defeat collective bargaining by its employees, because there was no substantial evidence introduced proving or supporting such statement or finding.

52. Excepts to the finding that at the time the contract was entered into no proof was presented that the organization had been designated by an uncoerced majority of the employees covered by the contract as their representative for the purposes of collective bargaining, upon the ground that this finding is not supported by any substantial evidence and is contrary thereto.

53. Excepts to the finding that the Respondent concluded that K. C. Brower was a union member and therefore discharged him in furtherance of

its effort to discourage membership in the Union, upon the ground that this is not supported by evidence.

CONCLUSIONS OF LAW

54. Excepts to Conclusion of Law No. 2 to the effect that by interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1) of the Act, upon the ground that this conclusion is not supported by any proper finding or substantial evidence.

55. Excepts to Conclusion of Law No. 3 to the effect that by dominating and interfering with the formation and administration of the Association and contributing support to it the Respondent has engaged and is engaged in unfair labor practices within the meaning of Section 8 (2) of the Act, upon the ground that such conclusion is not supported by any proper finding or substantial evidence.

56. Excepts to Conclusion of Law No. 4 to the effect that by discriminating in regard to the hire and tenure of the employment of the employees listed in Appendix "A" and Wayne Douglas, thereby discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 and International Association of Machinists, Local No. 198, the Respondent has engaged in and is engaging in unfair labor practices within the mean-

ing of Section 8 (3) of the Act, upon the ground that such conclusion is not based upon any proper findings or any substantial evidence.

57. Excepts to Conclusion of Law No. 5 to the effect that the Respondent's truck drivers at Pocatello, excluding the foremen, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act, upon the ground that such conclusion is not based upon any proper findings or substantial evidence.

58. Excepts to Conclusion of Law No. 6 to the effect that Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 440 was, on November 14, 1941, and at all times thereafter until January 16, 1942, and Local No. 983 thereafter, has been the exclusive representative of all of the employees in such unit for the purpose of collective bargaining within the meaning of Section 9 (a) of the Act, upon the ground that such conclusion is not based upon any proper findings or any substantial evidence.

59. Excepts to Conclusion of Law No. 7 to the effect that by refusing on November 21, 1941, and at all times thereafter, to bargain collectively with Local No. 440 and thereafter its successor Local No. 983 as the exclusive representative of all its employees in such unit, the Respondent has engaged and is engaging in unfair labor practices, within the meaning of Section 8 (5) of the Act, upon the ground that such conclusion is not based upon any proper finding or any substantial evidence.

60. Excepts to Conclusion of Law No. 8 to the effect that the labor practices of Respondent constitute unfair labor practices affecting commerce within the meaning of Section 2 (6) and (7) of the Act, because there is no substantial evidence supporting the conclusion that the Respondent engaged in any unfair labor practices.

RECOMMENDATIONS

61. Excepts to the recommendation that the Respondent cease and desist from dominating or interfering with the administration of the Association or with the formation or administration of any other labor organization of its employees, and from contributing financial or other support to the Association or to other labor organization of its employees, upon the ground that there is no substantial evidence supporting a finding that the Respondent has been engaged in any of such practices.

62. Excepts to the recommendation that the Respondent cease and desist from giving effect to or performing the contract of June 1, 1942, with the Association, or any extension or renewal thereof, or any other agreements, understandings or arrangements entered into with the Association respecting rates of pay, wages, hours of work, or other conditions of employment, upon the ground that the said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

63. Excepts to the recommendation that Respondent cease and desist from discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983 and the International Association of Machinists, Local No. 198, or any other labor organization of its employees, by discouraging, laying off or refusing to reinstate any of its employees, or in any other manner discriminating in regard to their hire and tenure of employment or any term or condition of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

64. Excepts to the recommendation that Respondent cease and desist from refusing to bargain collectively with Local Union No. 983 as the exclusive representative of the drivers of Pocatello, excluding the foreman, in respect to rates of pay, wages, hours of employment and other conditions of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

65. Excepts to the recommendation that Respondent cease and desist from in any other manner interfering with, restraining or coercing its employees in the exercise of the right of self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining, or other mutual aid or protection as

guaranteed by Section 7 of the Act, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

66. Excepts to the recommendation that Respondent completely disestablish the Association as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of work, and other conditions of employment, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

67. Excepts to the recommendation that Respondent withdraw all recognition from the Association as the representative of any of its employees for the purpose of dealing with the Respondent concerning grievances, labor disputes, wages, rates of pay, hours of work and other conditions of employment, and completely disestablish the Association as such representative, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

68. Excepts to the recommendation that the Respondent offer to the employees listed in Appendix "A" and Wayne Douglas immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper

conclusions and that said employees were in each and every instance discharged for reasons having no connection with the Act, and upon the further ground that some of said employees refused re-employment when offered by the Respondent, others were re-employed and thereafter left voluntarily.

69. Excepts to the recommendation that Respondent make whole the employees listed in Appendix "A" and Wayne Douglas for any loss of pay that may have been suffered by reason of any act on the part of the Respondent, by payment to each of them a sum of money equal to that which he normally would have received as wages from the date of the discharge to said proposed offer of reinstatement, less his net earnings during said period, upon the ground that said recommendation is not based upon any substantial evidence, proper findings or proper conclusions of law.

70. Excepts to the recommendation that Respondent upon request bargain collectively with Teamsters Local No. 983 as the exclusive representative of the Respondent's truck drivers at Pocatello, excluding the foremen, in respect to rates of pay, wages, hours of employment and other conditions of employment, upon the ground that there is no substantial evidence proving that said Local has the right or authority to represent Respondent's truck drivers in any such respect, or at all, and upon the further ground that there is no proper finding or conclusion upon which to base this recommendation.

71. Excepts to the recommendation that Respondent post immediately and in conspicuous places in its plant at Pocatello, on the premises occupied by Respondent at Boise, Idaho, and Baker, Oregon, and maintain for a period of at least sixty consecutive days from the date of posting, notices reciting the matters and things recommended in sub-division (f) on page 32 of said Report, upon the ground that said recommendation is not supported by any substantial evidence, proper findings or proper conclusions of law.

72. Respondent excepts generally to each and every adverse finding and conclusion of law and recommendation made in said Intermediate Report, upon the ground that a full, fair and impartial consideration of all of the evidence introduced in this cause clearly establishes the fact that the Respondent has not been guilty of violating any of the provisions of said Act.

II.

73. Excepts to the refusal of the Trial Examiner to grant the Motion of Respondent to dismiss the consolidated complaint, which motion was made at the close of the Board's case, and after the Board had adduced its evidence in support of the Consolidated Complaint and had rested. Said motion was predicated upon the fact that the proof adduced by the Board failed to prove a violation of any of the provisions of the National Labor Relations Act and is set forth at length on pages 925 to 945 inclusive of the record of said pro-

ceedings, to which record Respondent respectfully refers, and by reference makes said motion therein appearing and the ruling thereon as part hereof, as fully as if set forth herein at length. The ruling on said motion appears at page 949 of the record.

III.

74. Excepts to the failure of the Trial Examiner to grant its motion to dismiss the Consolidated Complaint, which motion was made at the conclusion of all of the evidence and after the Board first had rested, and is a renewal of the motion made at the conclusion of the Board's case and an adoption of the language thereof, and which motion appears at page 1595 of the record.

IV.

75. Excepts to the ruling of the Trial Examiner shown on page 93 of the record overruling the motion of counsel for the Respondent to strike the testimony of witness Lee Owen regarding testimony relating to matters which occurred months after the violations alleged in the complaint and overruling counsel's objections to testimony from the witness Owen on the ground that there is nothing shown by competent evidence that Local 983 inherited any of the rights or privileges of Local No. 440, and upon the further ground that the Charter of Local 440 was cancelled and picked up and ceased to exist.

76. Excepts to all of the testimony of witness Owen relating to the acts of Local 983 and objected by counsel and overruled on page 93 of the record.

77. Excepts to the ruling of the Trial Examiner to the objection of counsel for the Respondent to the question shown on page 413 of the record: "What conversation do you recall and when did it occur", upon the ground that such question was incompetent for any purpose, the Idaho Gas & Oil Company not being a party to this action and not owned by the Idaho Refining Company but by independent and individual stockholders.

78. Excepts to the rejection by the Trial Examiner of the offer of counsel for Respondent to prove that James Ayers was discharged from the Union Pacific stage lines for two reasons set forth in the record, and which rejection appears on page 458 of the record.

79. Excepts to the Examiner's permitting an entire line of inquiry regarding conversation between R. E. Stiff and the witness Loren R. McBride, which ruling on the objection of counsel for the Respondent appears at page 740 of the record.

Respectfully submitted,

IDAHO REFINING
COMPANY,

By HENRY D. MOYLE, D. L. M.
DAVID L. McKAY,

Residing at Salt Lake City,
Ut.

A. L. MERRILL, D. L. M.

Residing at Pocatello, Idaho,
Its Attorneys.

In the United States Circuit Court of Appeals
for the Ninth Circuit

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY,
Respondent.

CERTIFICATE OF THE NATIONAL LABOR
RELATIONS BOARD

The National Labor Relations Board, by its Chief of the Order Section, duly authorized by Section 1 of Article VI, Rules and Regulations of the National Labor Relations Board—Series 2, as amended, hereby certifies that the documents annexed hereto constitute a full and accurate transcript of a consolidated proceeding had before said Board entitled, “In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., and Idaho Refining Company and International Association of Machinists, Local No. 198, affiliated with the A.F. L.,” the same being Cases Nos. C-2380 and C-2381 before said Board, such transcript including the pleadings, testimony and evidence upon which the order of the Board in said proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Stenographic transcript of testimony held before Mortimer Riemer, Trial Examiner for the National Labor Relations Board, on August 3, 4, 5, 6, 7, 10, 11, 12, 13, 1942, together with all exhibits introduced in evidence.

(2) Copy of Trial Examiner Riemer's Intermediate Report, dated October 20, 1942.

(3) Copy of order transferring case to the National Labor Relations Board, dated October 22, 1942.

(4) Copy of respondent's request for oral argument before the Board.

(5) Copy of respondent's telegram, dated November 2, 1942, requesting an extension of time to file exceptions and brief.

(6) Copy of telegram, dated November 2, 1942, granting all parties an extension of time to file exceptions and brief.

(7) Copy of respondent's exceptions to the Intermediate Report.

(8) Copy of notice of hearing for the purpose of oral argument, dated December 19, 1942.

(9) Copy of list of appearances at the oral argument held before the Board on January 7, 1943.

(10) Copy of Decision and Order issued by the National Labor Relations Board, February 25, 1943, with Intermediate Report annexed, together with affidavit of service and United States Post Office return receipts thereof.

In Testimony Whereof the Chief of the Order Section of the National Labor Relations Board,

being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the City of Washington, District of Columbia, this 11th day of October, 1943.

[Seal]

JOHN E. LAWYER,

Chief, Order Section.

NATIONAL LABOR RELATIONS BOARD.

[Title of Circuit Court of Appeals and Cause.]

PETITION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

The National Labor Relations Board, pursuant to the National Labor Relations Act (Act of July 5, 1935, 49 Stat. 449, c. 372, 29 U.S.C. § 151 et seq.), respectfully petitions this Court for the enforcement of its order against respondent, Idaho Refining Company, its officers, agents, successors, and assigns. The consolidated proceeding resulting in said order is known upon the records of the Board as "In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. C-2380, and In the Matter of Idaho Refining Company and Inter-

national Association of Machinists, Local No. 198, affiliated with the A.F.L., Case No. C-2381.”

In support of this petition, the Board respectfully shows:

(1) The unfair labor practices which are the subject of the present proceeding occurred in the State of Idaho within this judicial circuit. This Court therefore has jurisdiction of this petition by virtue of Section 10 (e) of the National Labor Relations Act.

2. Upon all proceedings had in said matter before the Board, as more fully shown by the entire record thereof certified by the Board and filed with this Court herein, to which reference is hereby made, the Board, on February 25, 1943, duly stated its findings of fact, conclusions of law and issued an order directed to the respondent, its officers, agents, successors, and assigns. So much of the aforesaid order as relates to this proceeding provides as follows:

ORDER

Upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Idaho Refining Company, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Dominating or interfering with the administration of Idaho Refining Company Employees' Benefit and Labor Association, or with the forma-

tion or administration of any other labor organization of its employees, and from contributing financial or other support to said labor organization or any other labor organization of its employees;

(b) Recognizing or in any manner dealing with Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(c) Performing or giving effect to the contract of June 1, 1942, with Idaho Refining Company Employees' Benefit and Labor Association, or to any amendment, extension, or renewal thereof, or to any other contract, agreement or understanding entered into with said Association relating to grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment;

(d) Discouraging membership in Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, or International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, or any other labor organization of its employees, by discharging or refusing to reinstate, or in any other manner discriminating in regard to their hire or tenure of employment, or any term or condition of their employment;

(e) In any other manner interfering with, restraining, or coercing its employees in the exer-

cise of the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Withdraw all recognition from Idaho Refining Company Employees' Benefit and Labor Association as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, and completely disestablish said Association as such representative;

(b) Offer to the employees listed in Appendix A, except Boyd Cornia, Wayne Douglas, Henry Henrickson, A. Stanley Merrill, and Myron D. Whitesides, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges;

(c) Make whole each of the employees ordered reinstated in paragraph 2 (b) of this Order for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of the respondent's

offer of reinstatement, less his net earnings during such period;

(d) Make whole R. E. Miller for any loss of pay he may have suffered by reason of the respondent's discrimination against him, by payment to him of a sum of money equal to the amount which he normally would have earned as wages from the date of the respondent's discrimination against him to the date of his reemployment with the respondent as a truck driver, less his net earnings during such period;

(e) Post immediately in conspicuous places at its plant at Pocatello, Idaho, and at the premises occupied or used by the respondent at Baker, Oregon and Boise, Idaho, and maintain for a period of not less than sixty (60) consecutive days from the date of posting, notices to its employees, stating: (1) that the respondent will not engage in the conduct from which it is ordered to cease and desist in paragraphs 1 (a), (b), (c), (d), and (e) of this Order; (2) that the respondent will take the affirmative action set forth in paragraphs 2 (a), (b), (c) and (d) of this Order; and (3) that the respondent's employees are free to remain or become members of Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, and International Association of Machinists, Local No. 198, both affiliated with the American Federation of Labor, and that the respondent will not discriminate against any employee because of membership or activity in those organizations;

(f) Notify the Regional Director for the Nine-

teenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

(3) On February 27, 1943, the Board's decision and order was served upon respondent by sending a copy thereof postpaid, bearing Government frank, by registered mail, to respondent's attorneys.

(4) Pursuant to Section 10 (e) of the National Labor Relations Act, the Board is certifying and filing with this Court a transcript of the entire record in the consolidated proceeding before the Board, including the pleadings, testimony and evidence, findings of fact, conclusions of law, and order of the Board.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in the transcript, and upon so much of the order made thereupon set forth in paragraph (2) hereof, a decree enforcing in whole said order of the Board and requiring respondent, its officers, agents, successors, and assigns, to comply therewith.

NATIONAL LABOR RELATIONS BOARD.

By HOWARD LICHTENSTEIN,
Assistant General Counsel.

Dated at Washington, D. C., this 11th day of October, 1943.

Appendix A

Leo Archibald	Leonard Fowler
James Ayers	Arthur Heckert
K. C. Brower	Henry Henrickson
S. R. Burkholder	Carl Hill
Guy Campbell	A. Stanley Merrill
Boyd Cornia	John Ray
Howard Davis	Leland Stanford
Wayne Douglas	P. P. Stanger
Victor Ellingford	Myron D. Whitesides
John Evans	

District of Columbia, ss:

Howard Lichtenstein, being first duly sworn, states that he is Assistant General Counsel of the National Labor Relations Board, petitioner herein, and that he is authorized to and does make this verification in behalf of said Board; that he has read the foregoing petition and has knowledge of the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HOWARD LICHTENSTEIN,
Assistant General Counsel.

Subscribed and sworn to before me this 11th day of October 1943.

[Seal]

JOSEPH W. KULKIS,

Notary Public, District of
Columbia.

My commission expires April 15, 1947.

[Endorsed]: Filed Oct. 18, 1943. Paul P.
O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

STATEMENT OF POINTS ON WHICH
PETITIONER INTENDS TO RELY

Comes now the National Labor Relations Board, petitioner in the above proceeding, and, in conformity with the revised rules of this Court heretofore adopted, hereby states the following points as those on which it intends to rely in this proceeding:

1. Upon the undisputed facts, the Act is applicable to respondents and to the employees herein involved.

2. The Board's findings of fact are fully supported by substantial evidence. Upon the facts so found, respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act.

3. The Board's order is wholly valid and proper under the Act.

Dated at Washington, D. C., this 11th day of October 1943.

NATIONAL LABOR RELATIONS BOARD,

By HOWARD LICHTENSTEIN,
Assistant General Counsel.

[Endorsed]: Filed Oct. 18, 1943. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

ANSWER TO PETITIONER'S PETITION FOR
ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Circuit Court of Appeals for the Ninth Circuit:

Comes now the Respondent, Idaho Refining Company, a corporation, and answering the National Labor Relations Board's petition for enforcement of its order, respectfully:

(1) Admits paragraphs (1), (2), (3), and (4) of the said petition, except that Respondent denies that it has committed any unfair labor practices.

(2) Denies that the findings of the Trial Examiner, as adopted by the Board, and excepted to in the Statement of Exceptions heretofore filed with the Board by the Respondent (which statement is hereby referred to and made a part of this answer, as if fully set forth herein) are supported by the evidence, and denies that each of the findings is so supported.

(3) Denies that the order set forth in the said petition is valid, for the reason that the said order is based upon findings which are not supported by the evidence.

(4) Denies that the said order is valid, for the reason that it is not supported by the findings upon which it is based.

(5) Alleges that the conclusions of law and the said order and each part thereof are erroneous and unauthorized and without support of law, and should be reviewed and set aside.

Wherefore, the Respondent prays that the petition of the Board be denied; that the proceedings herein be reviewed by this Court, and that this Court set aside the said order of the board.

A. L. MERRILL,

HENRY D. MOYLE,

D.L.M.

Attorneys for Respondent.

State of Utah

County of Salt Lake—ss.

Henry D. Moyle, being first duly sworn, states that he is an officer of the Idaho Refining Company, respondent herein, to-wit, its vice-president; that he is authorized to make and does make this verification in behalf of the said respondent; that he has read the foregoing answer and knows the contents thereof; and that the statements made therein are true to the best of his knowledge, information and belief.

HENRY D. MOYLE.

Subscribed and sworn to before me this 23rd day of October, 1943.

[Seal] DAVID L. McKAY,
Notary Public, residing at
Salt Lake City, Utah.

My commission expires Feb. 2, 1945.

[Endorsed]: Filed Oct. 27, 1943. Paul P.
O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA #10583

United States of America, ss:

The President of the United States of America
To International Association of Machinists, Att:
Paul R. Hutchings, Machinists Bldg., Washing-
ton, D. C.,

GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of October, 1943 a petition of the National Labor Relations Board for enforcement of its order entered on February 25, 1943 in a proceeding known upon the records of the said Board as

“In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. C-2380, and in the Matter of Idaho Refining Company and Interna-

tional Association of Machinists, Local No. 198, affiliated with the A.F.L., Case No. C-2381,"

and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit, was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, this 18th day of October in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Received copy of this order to show cause, with attached copy of petition this 25th day of Oct. 1943.

INT. ASSN. OF MACHINISTS,

By L. O. THOMAS,

Research Dept.

Rec'd Oct. 25, 1943.

[Endorsed]: Filed Oct. 28, 1943. Paul P. O'Brien, Clerk.

ORDER TO SHOW CAUSE

CCA #10583

United States of America, ss:

The President of the United States of America

To Idaho Refining Co., Pocatello, Idaho; Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., 140 South First Ave., Pocatello, Idaho; International Association of Machinists, Local No. 198, A. F. of L., 316 North 9th Ave., Pocatello, Idaho and Idaho Refining Co. Employees' Benefit and Labor Association, 720 E. Oak, Pocatello, Idaho

GREETING:

Pursuant to the provisions of Subdivision (e) of Section 160, U.S.C.A. Title 29 (National Labor Relations Board Act, Section 10(e)), you and each of you are hereby notified that on the 18th day of October, 1943 a petition of the National Labor Relations Board for enforcement of its order entered on February 25, 1943 in a proceeding known upon the records of the said Board as

"In the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L., Case No. C-2380, and in the Matter of Idaho Refining Company and International Association of Machinists, Local No. 198, affiliated with the A.F.L., Case No. C-2381,"

and for entry of a decree by the United States Circuit Court of Appeals for the Ninth Circuit,

was filed in the said United States Circuit Court of Appeals for the Ninth Circuit, copy of which said petition is attached hereto.

You are also notified to appear and move upon, answer or plead to said petition within ten days from date of the service hereof, or in default of such action the said Circuit Court of Appeals for the Ninth Circuit will enter such decree as it deems just and proper in the premises.

Witness, the Honorable Charles E. Hughes, Chief Justice of the United States, this 18th day of October in the year of our Lord one thousand, nine hundred and forty-three.

[Seal] PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

MARSHAL'S RETURN

United States of America

District of Idaho—ss:

I hereby certify and return that I received the hereto annexed Order to Show Cause on the 26th day of October, 1943, and have served the same in the following manner, to wit:

On the Idaho Refining Co., by exhibiting the original and by handing to and leaving with William McMillan, Secretary of the said Idaho Refining Co., a true and correct copy of the said Order together with a copy of the Petition of the National Labor Relations Board attached thereto, at a point 3 miles

West of Pocatello, Idaho, on the 27th day of October, 1943;

On the International Association of Machinists, Local No. 198, A. F. of L. by exhibiting the original and by handing to and leaving with John Strechenfinger, Secretary of the said International Association of Machinists, Local No. 198, A. F. of L., a true and correct copy thereof, together with a copy of the Petition of the National Labor Relations Board attached thereto, at Pocatello, Idaho, on the 27th day of October, 1943;

On Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A. F. of L., by exhibiting the original and by handing to and leaving with Ray Jones, Secretary of the said Teamsters, Chauffeurs, Warehousemen's and Helpers Local No. 983, A. F. of L., a true and correct copy of the said Order together with a copy of the Petition of the National Labor Relations Board attached thereto, at Idaho Falls, Idaho, on the 29th day of October, 1943;

On the Idaho Refining Co. Employees Benefit and Labor Association by exhibiting the original and by handing to and leaving with D. L. Hill, as Secretary-Treasurer of the said Idaho Refining Co. Employees' Benefit and Labor Association, a true and correct copy of the said Order, together with a copy of the Petition of the National Labor Relations Board attached thereto, at a point 3 miles West of Pocatello, Idaho, on the 1st day of November, 1943.

Dated this 1st day of November, 1943.

ED. M. BRYAN,

U. S. Marshal for the District
of Idaho,

by: DAVE NICHOLS,
Deputy.

[Endorsed]: Filed Nov. 4, 1943. Paul P. O'Brien,
Clerk.

BOARD'S EXHIBIT No. 2

United States of America

National Labor Relations Board

I, Beatrice M. Stern, Executive Secretary of the National Labor Relations Board, and official custodian of its records, do hereby certify that attached is a full, true, and complete copy of:

Order Designating Trial Examiner in the Matter of Idaho Refining Company and Teamsters, Chauffeurs, Warehousemen and Helpers, Local No. 983, A.F.L. and Idaho Refining Company and International Association of Machinists, Local No. 198, affiliated with the AFL. Cases Nos. XIX-C-1071 and XIX-C-1082.

In Witness Whereof, I have hereunto subscribed my name and caused the seal of the National Labor Relations Board to be affixed this 29th day of July A. D. 1942, at Washington, D. C.

[Seal]

Executive Secretary.

[Title of Board and Causes.]

ORDER DESIGNATING TRIAL EXAMINER

Charges having been filed in this matter, and this matter having been set for hearing, and consolidated for the purpose of hearing, and the Board having considered the matter and being advised in the premises,

It Is Hereby Ordered that Mortimer Riemer act as Trial Examiner in the above cases and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 2 as amended of the National Labor Relations Board.

Dated, Washington, D. C., July 29, 1942.

[Seal]

GEO. O. PRATT

George O. Pratt

Chief Trial Examiner

United States of America
Before The National Labor Relations Board
Nineteenth Region

Case No. XIX-C-1071

In the matter of

IDAHO REFINING COMPANY

and

TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN & HELPERS, Local No. 983, A F L.

Case No. XIX-C-1082

In the Matter of

IDAHO REFINING COMPANY

and

INTERNATIONAL ASSOCIATION OF MA-
CHINISTS, Local 198, affiliated with the A F
of L.

TESTIMONY

District Court Room
Post Office Building
Pocatello, Idaho,
Monday, August 3, 1942

The above-entitled matter came on for hearing
at 10:00 a. m. pursuant to notice, as follows:

Before: Mortimer Riemer, Trial Examiner.

Appearances:

Louis S. Penfield, 812 Vance Building, Seattle, Washington, Attorney for the National Labor Relations Board. [1*]

Gerald P. Leicht, 1095 Market Street, San Francisco, California, appearing for the National Labor Relations Board, as attorney.

Henry A. Moyle, 720 Newhouse Building, Salt Lake City, Utah, appearing for Idaho Refining Co., respondent.

A. L. Merrill, Pocatello, Idaho, appearing for respondent, Idaho Refining Company.

David L. McKay, 720 Newhouse Building, Salt Lake City, Utah, appearing for respondent, Idaho Refining Company. [2]

GILBERT D. MOYLE

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Penfield) Mr. Moyle, are you an employee of the Idaho Refining Company?

A. Yes, sir. [14]

Q. In what capacity?

* Page numbering appearing at top of page of original Reporter's Transcript.

(Testimony of Gilbert D. Moyle.)

A. Manager—general manager.

Q. General manager of all the operations?

A. General manager of Idaho Refining Company, yes, sir.

Q. Where is your office?

A. West of Pocatello,—northwest.

Q. How long have you held your position?

A. Well, I came up in 1938, and I think it was in 1940 that I was made general manager.

Q. You have been general manager ever since 1940, is that correct?

A. I think,—as I recall, 1940.

Q. Would that be in January, 1940, the first of the year?

A. It seems to me that it must have been in October, as I recall it. I can't refresh my memory without looking at the record on that.

Q. What was your position with the company prior to that time?

A. I was acting as more or less sales manager and in charge of the expansion of our service station business.

Q. Were you located here in Pocatello?

A. Yes, sir.

Q. The same office? A. Yes.

Q. Who was general manager at that time?

A. The general manager was more or less vested in Mr. M. B. [15] Kaye.

Q. What is the correct name of the company?

A. Idaho Refining Company.

Q. What is the place of incorporation?

A. Nevada.

(Testimony of Gilbert D. Moyle.)

Q. Will you describe for us the general nature of the business done by the Idaho Refining Company?

A. Well, it is the refining of petroleum, crude oil, making petroleum products, and the distribution of the same.

Q. How is that distribution carried out?

A. Well, various ways,—through our own—some stations that are owned; and some that are not owned and controlled, some by major oil companies' purchases from our company, and so forth.

Q. What is the territory in which your products are distributed? A. Practically all in Idaho.

Q. What raw materials are used in your business? A. We have our crude shipped in.

Q. Where does that come from?

A. Montana and Wyoming.

Q. All of your crude? A. All our crude.

Q. Do you have any other raw materials?

A. Not that we manufacture, no.

Q. You do have other raw materials? [16]

A. We have other materials that we sell that we don't manufacture.

Q. What are those?

A. We sell lubricating oil which we don't manufacture, and part of that in the early stages was shipped in like most of it, and now only a very small part is, and we purchase that now here in Idaho.

Q. From whom do you purchase it?

(Testimony of Gilbert D. Moyle.)

A. From the Co-op Oil Company at Caldwell, Idaho.

Q. Where is that oil produced?

A. I don't know where they purchase it.

Q. Is it produced in Idaho?

A. I doubt it. There isn't any oil produced in Idaho. They have a plant for making kerosene, and I wouldn't be surprised that they do some blending. I wouldn't be sure.

Q. Do you also purchase gasoline?

A. We have purchased gasoline a little this year only. We have never purchased any gasoline outside before.

Q. In terms of dollar value, can you give us the total dollar value of the raw materials that you purchased during the year 1941, approximately?

A. No,——

Mr. Penfield: May we go off the record for a minute?

Trial Examiner Riemer: Off the record. The hearing will recess for five minutes. [17]

(Whereupon a recess was taken).

Trial Examiner Riemer: On the record.

Mr. Penfield: Will you read the last question?

(Last question read aloud by the reporter as hereinabove recorded.)

A. I think that the answer to that question was about \$1,300,000.

Q. \$1,328,000 was the amount given.

Mr. Moyle: If you care to, you could read the figures just given and ask a leading question.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield) All right. In the off-the-record discussion, the parties agreed the figure of the raw materials purchased in 1941 was approximately \$1,328,000, of which \$1,230,000 was crude oil, all of which was shipped in to the refinery at Pocatello from points outside of Idaho. Is that correct? A. I think so, yes.

Trial Examiner Riemer: You mean just the crude oil was shipped in?

Mr. Penfield: All the crude oil in the amount of \$1,230,000. We also agreed that of the raw materials, in excess of 90 per cent. of the raw materials used was shipped in to Idaho from points outside the State of Idaho.

Mr. Moyle: Would you read that?

(Whereupon the last statement hereinabove recorded was read aloud by the reporter.)

Mr. Moyle: You mean to say that approximately 90 per cent. was [18] shipped in?

Mr. Penfield: Well, "approximately" is close enough.

Mr. Moyle: I think that is what it had better be, —approximately 90 per cent.

Mr. Penfield: All right.

Q. (Mr. Penfield) We also agreed that Ethyl Compound in the amount of \$47,000 was purchased during the year 1941. Was that all shipped in from points outside the State of Idaho? A. Yes.

Q. We also agreed that fuel oil in the amount of approximately \$42,000 was purchased during the

(Testimony of Gilbert D. Moyle.)

same period. Was all that shipped in from points outside the state? A. No, I don't think so.

Q. Where was that secured?

A. I am not certain as to that figure on fuel oil, but we are only purchasing a very small amount of fuel oil—it seems to me that is excessive.

Q. Well, that was in 1941.

A. Well, that is possible, but it seems to me our purchases would not have been over about two thousand in 1941—well, that is possible—yes, I think possibly that is possible. I was not considering the heavy oil.

Q. I understood that was the figure given.

A. We will accept that. I think that is possible.

Q. Did I understand you to say that was or was not shipped from [19] outside the state?

A. It would be shipped in from outside the state.

Q. What are the finished products of the company?

A. Well, we have just mainly two, mostly gasoline, the other is a heavy fuel oil.

Q. In the off-record discussion, we agreed that the gross sales of the company in the year 1941 amounted to approximately \$1,900,000, is that correct?

A. I think that would be approximately correct.

Q. And we also agreed that approximately 10 per cent, was shipped to points outside the state of Idaho?

A. I think that would be approximately correct.

(Testimony of Gilbert D. Moyle.)

Q. Did the trucks of the company travel to points outside of Idaho? A. Yes.

Q. And into what states did they go?

A. We went into Wyoming and Nevada, and I think into Oregon and Washington in 1941.

Q. And Utah, also? A. And Utah.

Q. Can you give me a list of the names of the officers of the company—

Trial Examiner Riemer: Just a minute.

Q. (Trial Examiner Riemer) Why did those trucks go into those states, for what purpose? [20]

A. What?

Q. For what purpose did they go into the states you named? A. Mainly the transfer of gas.

Q. To deliver gasoline?

A. To deliver gasoline.

Q. (Mr. Penfield, continuing) Could you give me a list of the names of the officers of the company during the year 1941?

Mr. Moyle: I will answer for him, if I may. K. W. Yates, A. H. Kelson,—these are directors.

Mr. Penfield: My question was, first, your officers. I also want to get the directors in.

The Witness: Well, in 1941, Gilbert S. Sheets was president; Henry D. Moyle, vice-president; Frank L. Copening was secretary, and John H. Peterson, treasurer.

Q. (Mr. Penfield, continuing) Were those all the officers?

A. Those were all the officers, yes.

Q. You were general manager? A. Yes.

(Testimony of Gilbert D. Moyle.)

Q. Have there been any changes in the officers up to the present time? A. Yes.

Q. What were those changes?

A. Well, the changes have been, the Army got Frank Copenig, so he was replaced by William McMillan.

Q. When was he so replaced? [21]

A. He was replaced, I think it was, about the first of July of this year.

Q. Was that immediately after Mr. Copenig left?

A. About 30 days, and Mr. Peterson, as I recall, left about the first of April.

Q. Who replaced him?

A. He was replaced by B. J. Albertson.

Q. Are those the only changes in the officers?

A. The office of president, Gilbert S. Sheets,—he resigned, and it hasn't been filled.

Q. When did he resign?

A. It seems to me about the first of July of this year.

Q. What were the names of the members of the Board of Directors in 1941?

Mr. Moyle: K. W. Yates; A. H. Kelson; W. A. Madsen; O. C. Allen; S. M. Covey; E. S. Sheets; G. S. Sheets; Gilbert D. Moyle, and H. D. Moyle.

Mr. Penfield: Did you name two Sheets?

Mr. Moyle: Two Sheets, yes.

Mr. Penfield: What were the initials?

Mr. Moyle: Gilbert S. and E. S.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield) Have there been any changes since 1941?

A. Yes, in 1941, as I recall, W. A. Madsen resigned, or in 1942, as I recall it. He may have resigned before the first of the year, but Dr. W. R. Calderwood was elected in March of this [22] year at the annual meeting. [23]

Q. How many persons are employed out there?

A. In the refinery?

Q. Well, in the entire operation.

A. Oh, that varies from time to time. I would say offhand, at this time we have possibly about 90.

Trial Examiner Riemer: Do I understand by your question that you want to know the number of employees in the refining plant in Pocatello?

Mr. Penfield: I want to know the total number of employees of the company.

Trial Examiner Riemer: That would be all over the state?

Mr. Penfield: I think that I can clear it up.

I want to know the total number of employees of the company, then I want them broken down.

The Witness: Well, I was just,—to just approximate, I would say 90. I can't tell you off-hand.

Q. (Mr. Penfield, continuing) That is the total number?

A. That would be approximately the total number.

Q. Now, of these employees, how many work in the refinery, proper?

(Testimony of Gilbert D. Moyle.)

A. Well, including the mechanics, drivers, refinery men, and [24] all, I would say possibly 65 or 70.

Q. Well, excluding the drivers and the mechanics?

A. Well, they are all under one payroll there. I could take it off that for you. I couldn't tell you exactly. I am trying to give you approximately the figure.

Q. How many drivers do you have?

A. Well, that varies almost from week to week. I think that we have had as high as about 24 or 25 drivers or 26, and as low as about 14.

Q. How many mechanics do you have?

A. Well, we have had as high as 6 mechanics, I think, with the shop foreman, and as low as 2 or 3. It has varied with the growth of our business and the season.

Q. About how many office employees do you have? A. I would say offhand, 20 or 15.

Q. And the remainder of the employees work in the refinery proper?

A. Yes, the refinery proper is pretty well automatic, you know. We don't have so many in proportion to the operation as you might think.

Q. Does that run 24 hours a day?

A. Yes, runs three shifts a day—8 hours. [25]

Q. Did you ever have anyone in your employ by the name of Webb? A. Yes.

Q. What was his position?

A. He had the position of secretary.

(Testimony of Gilbert D. Moyle.)

Q. Was that Arch Webb?

A. Yes. He is now a captain in the army.

Q. Was he the predecessor of Mr. Copening?

A. Yes.

Q. When did Mr. Copening supersede him?

A. Copening came about a year ago last December; that would be about 1940, December 1st of 1940. Was it 1940?

Yes, 1940, December 1st. Webb left about that same time, the same day.

Q. The Idaho Refining Company, is it owned by a parent corporation? A. No.

Q. Does the Idaho Refining Company own the Covey Gas & Oil Company? A. Yes.

Q. They own all the stock in the Covey Gas & Oil Company? A. Yes, I think they do.

Mr. Merrill: That is the Covey Gas & Oil Company of Idaho.

A. Not of Utah. You see, there is the Covey Company of Wyoming and Utah which isn't part of this company. [31]

Mr. Merrill: He has a company in Idaho, too.

The Witness: This is the Covey Gas & Oil Company of Idaho.

Q. (Mr. Penfield, continuing) Does the Company own any interest in the Covey Gas & Oil of Utah or Wyoming? A. No, sir.

Q. None whatever?

A. No interest whatever.

Q. What is the connection of the Idaho Refining Company with Gas Save of Idaho?

(Testimony of Gilbert D. Moyle.)

A. I think Gas Save was an old organization Covey had that was in the Covey Gas & Oil Company.

Mr. Moyle: Of Utah.

Q. (Mr. Penfield, continuing) Was that a separate corporation?

A. I am not certain whether that was a corporate set-up or not.

Mr. Merrill: We object to any further testimony about it.

The Witness: I don't know about that.

Mr. Merrill: We object to testimony relative to Gas Save Company because it isn't involved.

Mr. Penfield: I think it is relevant to establish the subsidiaries of the company.

Mr. Merrill: It isn't a subsidiary.

Trial Examiner Riemer: The objection is sustained.

Q. (Mr. Penfield, continuing) What is the connection of the company with Idaho Southern Gas & Oil Company? [32]

A. Idaho Southern hasn't been in existence, I don't think, for two years.

Q. Does it still have a corporate charter?

A. I am not certain whether we have ever kept up our corporate name,—I don't know whether or not we ever paid the fee at Boise. It seems to me that it was in 1939 or 1940 that we closed the books of that company.

Q. What was the connection of the Idaho Southern Gas & Oil Company with the company?

(Testimony of Gilbert D. Moyle.)

A. It was a separate corporation operating for the purpose of distributing petroleum products.

Q. Was it formerly owned by the Idaho Gas & Oil Company?

A. No, I think, about I would say 42 per cent. was owned outside. I am not quite familiar with that at this time.

Q. You say that it hasn't been operating for the past two years?

A. My recollection is that we discontinued the operation of that company—was it in 1940 or 1941?

About two years,—1940, as I recall it.

Q. What is the connection of the company with the Idaho Gas & Oil Company?

A. We have no connection, with the exception that we sell the gasoline. It has been a separate corporation.

Q. Is any of the stock owned by the Idaho Refining Company?

A. I think not. I am not certain of that. I don't think there [33] is a share of stock owned by Idaho Refining Company.

Q. Is that an Idaho corporation? A. Yes.

Q. Where is the principal place of business?

A. Principal place of business was in Boise, then we transferred,—

Trial Examiner Riemer: Whose place of business?

A. We principally opened that company up when we opened the Boise area.

(Testimony of Gilbert D. Moyle.)

Q. (Trial Examiner Riemer) —you mean——

A. Idaho Gas & Oil Company, yes. We had some other business around the country, but it was principally Boise business.

Mr. Moyle: Do you mean the statutory place of business of that company?

Mr. Penfield: Yes.

Mr. Moyle: Of course, the best evidence would be the record of the Secretary of State. I think at Pocatello, isn't it?

A. We later transferred all of our operations.

Mr. Moyle: It is either Boise or Pocatello?

A. Yes. We of course maintained our office which is in Boise, but I am not certain where the principal—I don't recall.

Q. (Mr. Penfield, continuing) Who were the officers of the Idaho Gas & Oil Company?

A. Well, we have changed those of recent date.

Q. Who were they in 1941? [34]

A. The Army has taken so many of our men, we have had to change with the Army.

Q. Who were they, in 1941?

A. Well, I think in 1941 John Peterson was president. He was our auditor.

Q. He was an officer, was he not, of the Idaho——

A. Yes, sir; of Idaho Refining Company.

Q. Go ahead.

A. I can't tell you offhand who the other officers are. I think that Mr. Copening was an officer of this company. I don't know whether Secre-

(Testimony of Gilbert D. Moyle.)

tary or Treasurer. I could get that information for you, if you like.

Q. Who was the manager?

A. Mr. Copening directed the affairs, and Mr. Webb before his time.

Q. Did the Idaho Gas & Oil Company have separate offices from the Idaho Refining Company?

A. We had separate offices in Boise, and we still maintain those offices there, and we keep records here at Pocatello.

Q. Who is the present manager who succeeded Mr. Copening?

A. The present manager is Mr. MacMillan.

Q. Did Mr. Copening, Mr. Webb and Mr. MacMillan all maintain their offices here at Pocatello?

A. Yes. Mr. Copening for a good deal of his time prior to December of 1940 was in Boise as manager of the Idaho Gas & Oil [35] Company operations there.

Q. What was the connection of Mr. M. L. Smith with the Idaho Gas & Oil?

A. Mr. Smith is manager of the Covey Gas & Oil Company, and he has no connection with the refining company or the Idaho Gas & Oil Company.

Q. What was the connection of Harrison Jones?

A. Harrison Jones is bookkeeper and auditor.

Q. For Covey or the Idaho Gas & Oil?

A. That is for Covey.

Q. Is it a separate group of employees here in

(Testimony of Gilbert D. Moyle.)

Pocatello who are working for Idaho Gas & Oil Company?

A. Yes, sir; they have their own bookkeeping system and their own employees.

Q. Do they have separate offices?

A. Well Covey had their offices here in the Central Building in Pocatello for three years, I think, and then we cut down our overhead. It has been quite a struggle, and we built an addition to our offices at the Refinery and cut out that rent downtown.

Q. (Trial Examiner Riemer) Are you talking about Covey?

A. Yes. I thought that you asked about both.

Q. (Mr. Penfield, continuing) I wanted to know if the Idaho Gas & Oil Company maintained a separate office?

A. No, they used half of this same addition. We have it [36] lettered,—it says "Idaho Gas" on the door on half, and Covey's half has its half of the building,—the new addition.

Q. Are they in the same building with the Idaho Refining Company?

A. Yes, sir; they are under the same roof; it is an addition to our building.

Q. Are they in a separate office from the office of the Idaho Refining Company?

A. Yes. The Idaho Refining Company employees have a separate office but in the same building.

Q. Did Mr. Copening or Mr. Webb or Mr. Mac

(Testimony of Gilbert D. Moyle.)

Millan conduct the affairs in connection with both the Idaho Gas & Oil Company and the Idaho Refining Company?

A. From the same office, yes, sir; they had a separate office of their own, but conducted the business of both from our office.

Q. Who signs the checks of employees of the Idaho Gas & Oil Company?

A. The auditors sign, and they are countersigned by Mr. Webb and Mr. Copening and they have to have two signatures on the checks. They are separate checks of each company.

Q. Are they issued by the Idaho Gas & Oil Company?

A. Yes, they issue their own checks, and Covey issues their own checks.

Q. What is the purpose of the Idaho Gas & Oil Company?

A. Well, we have had other companies—a company operating our retail—handling our distribution, and they have made [37] money in the past. I don't know whether we will in the future, or not. It is pretty tough.

Q. Do they distribute the products of the Idaho Refining Company exclusively?

A. Well, outside of what we purchase outside. They do purchase equipment, accessories, and tires, so they have had in the past some other sources other than our company.

Q. Did they purchase any gasoline from other sources?

(Testimony of Gilbert D. Moyle.)

A. No, sir,—I hope not. Yes, I will take that back. We bought, in the Idaho Gas & Oil, the Boise end, we bought gasoline there for about—well, it was from June to January 5 of this year—June of last year—we bought about half a million gallons a month over there from the Shell Company.

Q. Does the Idaho Gas & Oil Company own service stations? A. Yes, sir.

Q. Where are they located?

A. Well, we have them located, I think, all in the state of Idaho. There is no outside stations that we own anywhere.

Q. They own trucks — I am speaking of the Idaho Gas & Oil Company?

A. Yes, they have their own truck fleet.

Q. Does that fleet operate from Pocatello?

A. No, they generally operate in our own district. We have some that come in and out of Pocatello, but not transporting [38] gasoline as a regular means of transportation. They haul gasoline for their own district or territory.

Q. How many districts do you have?

A. We have quite a number. It is broken up. You see, we have——

Trial Examiner Riemer: Whom do you mean by “we”? Excuse me, but the questions aren’t clear, Mr. Penfield. Will you read the question?

(Last question read aloud by the reporter as hereinabove recorded.)

Mr. Penfield: I will rephrase it.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield, continuing) How many districts does the Idaho Gas & Oil Company have?

A. Well, we have a Nampa-Caldwell district; the Hammet district, the Meridian district, the Boise district, the King Hill district, the Glenns Ferry district, the Gooding district, and Fairfield district, the Jerome district, Buhl and Filer district, and the Twin Falls district, and we have the Oakley district—Rupert. I think that I mentioned Burley. It is broken up that way all over the whole state.

Q. When you say the Idaho Gas & Oil Company has districts, do you mean the Idaho Gas & Oil Company has offices in each one of these districts?

A. Well, we have representatives, we call them that, yes.

Q. Are these representatives operators of service stations?

A. Yes, they have their own wholesale business.

[39]

Q. What do you mean by their own wholesale business?

A. Well, they buy gas from the Idaho Gas, and distribute it around to the state and federal government and companies and some stations they lease, and some they are operating themselves.

Q. In addition to these districts, does the company maintain any other office than in Pocatello—the Idaho Gas & Oil Company?

A. We maintain quite a nice office in Boise.

(Testimony of Gilbert D. Moyle.)

Q. About how many employees are there at Boise?

A. Well, I think that we have had about five and six employees over there.

Q. Do you have a manager in Boise?

A. Yes, we do.

Mr. Moyle: When you say "we", you mean the Idaho Gas & Oil Company? A. Yes.

Q. (Mr. Penfield, continuing) I am sorry, I get off on that——

A. Well, I understood the question.

Q. The Idaho Gas & Oil Company?

A. Yes, we have a manager over there.

Mr. Moyle: Might I suggest that the witness refrain from using the word "we" in connection with these various companies?

Q. (Mr. Penfield, continuing) Does the Idaho Gas & Oil Company have a manager in Boise?

A. Yes. [40]

Q. What is the name of the manager?

A. W. D. Sheppard.

Q. What are his duties?

A. His duties over there are to sell gasoline and look after the general interests of the company.

Q. Does the Idaho Gas & Oil Company have trucks operating in Boise? A. Yes.

Q. Is Mr. Sheppard in charge of all the personnel in the Boise district?

A. Well, I would say so, pretty well.

Q. Would he hire and fire all of the personnel in that district?

(Testimony of Gilbert D. Moyle.)

A. No, no; he couldn't do that.

Q. Who would?

A. Well, it would have to be taken up—it has been taken up with Mr. Copening, in the past, or Mr. Webb, and if I am not mistaken, I have been consulted on it.

Q. What is your connection with the Idaho Gas & Oil Company?

A. I haven't any connection, except that we are interested in seeing that they keep selling our gasoline and get along and make money so that they can pay their bill to us. We take the same interest we have with Reliance Oil Company—they are operating out of here, out of Pocatello—we have that same interest, although we have no connection with them. [41]

Q. If there was a truck driver to be hired at Boise, would it be Mr. Sheppard who would hire the driver?

A. It has been done, yes.

Q. Does he generally hire the drivers in Boise?

A. I don't think so, as a general rule, without consulting with the Idaho Gas & Oil Company officials.

Q. Can you give me the names of the board of directors of the Idaho Gas & Oil Company?

A. I will get them for you if you want them, later. I don't like to give them from memory.

Mr. Penfield: Do you have those available, counsel?

Mr. Moyle: No, I haven't; I am sorry.

(Testimony of Gilbert D. Moyle.)

Q. (Mr. Penfield, continuing) Do you know Earl Stiff? A. Yes, sir.

Q. Who is he?

A. He is attached to our labor crew in the plant.

Q. Out here at the Pocatello plant?

A. Yes.

Q. Was that true in 1941?

A. Yes, he took some time off, I don't recall just when it was, but I think that he was there most of 1941.

Q. Do you know a man who is located in Baker, Oregon, by the name of Stiff? A. Yes.

Q. Is that the same individual? [42]

A. No, sir.

Q. Who is the individual in Baker, Oregon?

A. Oh, Earl—yes, sure, Earl Stiff—I was thinking of another. Earl Stiff, that is his initials, yes.

Q. Well, who is he?

A. Well, he was trucking in this area, and we employed him to do some trucking for the company.

Q. When did you first employ him?

A. Well, we bought his trucks in—oh, I cannot offhand remember the date. It seems to me it was in October, 1941, and at that time we employed him as our manager there over the trucking department.

Trial Examiner Riemer: Who is "we"?

The Witness: That is the Idaho Refining Company.

Q. (Mr. Penfield, continuing) Prior to October, did the Idaho Refining Company have any connection with Earl Stiff?

(Testimony of Gilbert D. Moyle.)

A. I think that he was working for Inland Empire Refineries before that time.

Q. He was working out of Baker?

A. That is his home, Baker.

Q. Will you describe just what occurred in October of 1941?

A. We purchased his truck equipment and put him on our payroll as manager, and he just looked after our interests over there.

Q. Was this an outright purchase, or a lease?

A. Outright purchase. [43]

Q. Had you ever had any lease arrangements with him prior to that time? A. No, sir.

Q. Had you ever had any lease arrangements with him at any time? A. I don't think so.

Q. Did you have any agreement, either oral or written, with Mr. Stiff, relative to the operation of trucks out of Baker? A. I don't think so.

Q. How was Mr. Stiff paid?

A. By the Idaho Refining Company once a month.

Q. Was that on a direct salary? A. Yes.

Q. Did he employ the drivers? A. Yes.

Q. Who paid the drivers?

A. We did,—Idaho Refining Company.

Q. How long did this arrangement continue?

A. Well, I think that it continued up until April of this year, or such a time—about the first of April, I think, is when we discontinued with his services. The payroll will show that. I can't tell you.

Q. During the time that you had this arrange-

(Testimony of Gilbert D. Moyle.)

ment with Mr. Stiff, did the trucks always operate out of Baker?

A. No, we operated them for a period of time out of our plant [44] here at Pocatello.

Q. But your testimony is that since April, Mr. Stiff has had no connection with the Company?

A. I think that it was April.

Q. Approximately? A. Yes. [45]

Q. You were speaking of a man by the name of Smith. Who was he? A. M. L. Smith?

Q. Yes.

A. He is manager of the Covey Gas & Oil Company.

Q. State whether or not he had any powers to hire or fire men?

A. Yes, he has hired and fired men.

Q. Now, with respect to these three companies of which you have spoken, Idaho Refining Company, Idaho Gas & Oil Company, [55] and the Covey Gas & Oil Company of Idaho, it is my understanding, and is this correct,—that the Covey Gas & Oil Company, the corporate stock is owned by the Idaho Refining Company? A. Yes.

Q. That is, the Covey Gas & Oil Company of Idaho? A. Yes.

Q. There is a distinction between the Covey Gas & Oil Company and the Covey Gas & Oil Company of Idaho, is there not? A. Yes.

Q. Covey Gas & Oil Company is a Utah corporation that owned service stations—

A. And property.

(Testimony of Gilbert D. Moyle.)

Q. And various items of property in various states? A. Yes.

Q. That is not the company of which you speak?

A. No, sir.

Q. The Covey Gas & Oil Company, the stock of which is owned by the Idaho Refining Company, is purely a subsidiary distributing company of the Idaho Refining Company products? A. Yes.

Q. And has no connection with Covey Gas & Oil Company, the other company of which you speak? A. No.

Q. That is correct? A. Yes.

Q. With reference to the Idaho Gas & Oil Company, I understood [56] you to say that the Idaho Refining Company does not own any of the corporate stock of the Idaho Gas & Oil Company, that is correct, is it not? A. Yes.

Q. The stock of the Idaho Gas & Oil Company is owned by individual people? A. Yes.

Q. Some of whom are owners of the Idaho Refining Company stock and some who are not?

A. Yes, that is correct.

Q. Is there any interlocking relationship at all between the Idaho Refining Company and Idaho Gas & Oil Company other than Idaho Gas & Oil Company is a substantial debtor of the Idaho Refining Company? A. That is correct.

Q. Idaho Refining Company sells its gasoline and oils to the Idaho Gas & Oil Company and they distribute it, is that the truth? A. Yes.

(Testimony of Gilbert D. Moyle.)

Q. The stations which the Idaho Gas & Oil Company operates are owned by whom?

A. By the Idaho Gas & Oil Company.

Q. And not by the Idaho Refining Company?

A. No, sir.

Q. So there are two distinct companies? [57]

A. Yes.

Q. I believe you mentioned the fact that some of the individuals interested in the Idaho Refining Company are also officers in the Idaho Gas & Oil Company, is that correct? A. Yes.

Q. That is because of their corporate stock ownership in both companies? A. Yes.

Q. The Idaho Refining Company's interest in the Idaho Gas & Oil Company is that of a creditor, and a company that distributes its products, is that true? A. Yes, sir.

Q. Are you a stockholder in each company?

A. I don't think that I ever had any stock in the Idaho Gas & Oil Company. I think that I was supposed to purchase some, and never did. I am a stockholder of the Idaho Refining Company.

Q. You are not an officer of the Idaho Gas & Oil Company? A. No, sir.

Q. And never have been one? A. No, sir.

[58]

Redirect Examination

Q. (Mr. Penfield) Now, this clean-out that you refer to when you shut the plant down, how often does that occur?

(Testimony of Gilbert D. Moyle.)

A. Well, unfortunately in the beginning, it was occurring about [73] every two weeks, and we were terribly disrupted. After we have been able to get the plant running, we are now running as long as 30 days, and sometimes longer.

Q. How long will the plant be shut down?

A. We have been shutting down 10 days. The minimum is about 4 days.

Q. What percentage of the truck drivers usually assist you in this work?

A. It depends on just how our sales are. During our shutdown periods, we attempt to shut off our sales. When the shutdown period comes, naturally I inform the department to shut off deliveries, necessarily leaving some drivers out, and we have used the drivers and extramen that have been driving, on this work.

Q. Are they paid any extra compensation for this work?

A. No, they are paid regular driver's wages, whatever their wage has been in the plant.

Q. You testified, I believe, that you usually have somewhere around 20 drivers?

A. I testified that I thought the maximum we have had is about 24 or 25; and I think as low as 14.

[74]

Q. (Mr. Penfield) Mr. Moyle, can you identify those exhibits at the present time?

A. Yes, I had one of our bookkeepers okeh this.

Mr. Penfield: They have already been marked for identification, and I would now like to offer this

(Testimony of Gilbert D. Moyle.)

list of truckdrivers with the periods they began work, and the periods the work ended, as Board's Exhibit 3, and this list of truck drivers as of March 31, 1942, as Board's Exhibit 4.

Mr. Moyle: We have no objection to 3, but do object to 4 on the ground that it does not come within any of the proper issues of this case, and is immaterial and irrelevant.

Trial Examiner R i e m e r: May I see them, please?

Q. (Trial Examiner Riemer) Mr. Moyle, what is the source of the information contained on these sheets, Board's Exhibit 3, for identification, for example, both names and dates?

A. This shows the period that——

Mr. Moyle: He said the source of the information.

A. (Continuing) Oh, the source of the information—I received from our bookkeeper here at noon,——

Q. (Trial Examiner Riemer) Are those dates, for example, opposite the names on that exhibit listed taken from your payroll records?

A. Yes, that is as I understand it.

Trial Examiner Riemer: Board's Exhibit 3 may be admitted [79] in evidence.

(Whereupon the document heretofore marked as Board's Exhibit 3 for identification, was received in evidence.)

(Testimony of Gilbert D. Moyle.)

BOARD'S EXHIBIT No. 3
IDAHO REFINING COMPANY—TRUCK DRIVERS

Name	This column in pencil	Period began work	Period work ended
Leo Archibald, Trk Mechanic .....	.....	Jan 16-31, 1941	Nov 1-15, 1941
James Ayers	No date	Sept 1-15, 1938	"
S. R. Burkholder	10/21	Feb 16-31, 1940	"
K. C. Brower .....	.....	Jan 18-31, 1941	"
Guy Edward Campbell	9/29	June 16-30, 1941	"
Edward Boyd Cornia	10/ 1	May 16-31, 1940	"
Howard Lee Davis	9/29	June 16-39, 1941	"
Victor Ellingford	9/29	Sept 1-15, 1938	"
John P. Evans	9/29	Sept 16-39, 1939	"
Leonard Fowler	9/29	Sept 1-15, 1939	"
Arthur Leroy Heekert	9/29	Mar 1-15, 1940	"
H. H. Henriksen	9/30	Oct 1-15, 1938	"
Carl E. Hill	9/29	Jan 1-15, 1940	"
A. Stanley Merrill	10/ 2	April 16-30, 1939	"
Robt. W. Patterson	9/29	Jan 1-15, 1940	"
John Ray	9/29	May 16-31, 1941	"
Leland William Stanford	10/21	July 1-15, 1941	"
Parley P. Staiger	9/30	Feb 16-29, 1940	"
R. Elezar Miller	10/ 2	April 16-30, 1941	"
Myron D. Whitesides	No date	July 16-31, 1940	Sept 16-30, 1940
[Circled] 19		To Western Gateway	
		Mar 1-15, 1941	Nov 1-15, 1941

(Testimony of Gilbert D. Moyle.)

Q. Is the same true, Mr. Moyle, for Board's Exhibit 4 for identification? A. Yes.

Q. A list of your truck drivers as of March 31, 1942? A. Yes.

Trial Examiner Riemer: The objection is overruled, and it may be admitted and marked in evidence as Board's Exhibit 4.

(Whereupon the document heretofore marked as Board's Exhibit 4 for identification, was received in evidence.) [80]

BOARD'S EXHIBIT No. 4

IDAHO REFINING COMPANY

TRUCK DRIVERS

March 31, 1942

Name	Date Employed	Last Day of Employment
Charles Cunningham	11-14-41	
Lester D. Pope	11-15-41	3-12-42 To West- ern Gate
Robert K. Roberts	11-14-41	2-11-42
Robert T. Ferguson	11-17-41	11-23-41
Merlin F. Bowman	11-18-41	
Jack Hollahan	11-17-41	
W. Garrett Leigh	11-17-41	
Harry Messenger	11-17-41	2-26-42
Sam Moss	11-17-41	
Trever Moss	11-17-41	2- 3-42
C. E. McNurlen	11-15-41	
Dayrl J. McMullin	11-15-41	
Stirling Sigman	11-17-41	1-15-42
Delmar T. Swatsenbarg	11-17-41	11-27-41
Lawrence C. Van Voorhis	11-16-41	
Jesse R. Warnick	11-17-41	
Robert Whittig	11-16-41	

(Testimony of Gilbert D. Moyle.)

Name	Date Employed	Last Day of Employment
William Kenneth McPheeley	12- 6-41	12-26-41
W. G. Terry	12- 6-41	2- 4-42
William E. Westergard	12- 1-41	
J. A. Thomsen	12-23-41	
Donald Grandjean	12-23-41	
Phillip W. Meader	12-30-41	2-14-42
Cleone Stewart	2- 4-42	3-27-42
George Comstock	2-26-42	
Clark Baum	3-11-42	
Alden Leroy Dehlin	3-28-42	
Ivan Raymond Cozad	3-16-42	
R. E. Miller	3-11-42	

LEE OWEN

was called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Penfield) State your name, please?

A. Lee Owen, Stafford Apartments, Pocatello.

Q. Are you employed at the present time, Mr. Owen? [85] A. Yes, sir.

Q. What is your position?

A. I am secretary-treasurer and business agent of the Teamsters Union, Local 983.

Q. Is that the full name of that organization?

A. It is the Teamsters, Chauffeurs, Warehousemen & Helpers' Union, Local 983.

Q. Affiliated with the American Federation of Labor?

(Testimony of Lee Owen.)

A. Correct, and also the International Brotherhood of Teamsters.

Q. That is the organization which filed the amended charge in this proceeding?

A. That is correct.

Q. How long have you held that position?

A. In this particular district, since the 27th day of December, 1941.

Q. Prior to that time, what position did you hold?

A. Prior to that time, for five years, I was president and business agent of the Produce Drivers' Employees' Union, Local 630, Los Angeles, California, and also Secretary of the Western Produce Council.

Q. Are those organizations affiliated with the Teamsters? A. That is correct.

Q. In the fall of 1941, had the Teamsters chartered any labor organizations in the Pocatello and Idaho Falls vicinity? [86]

Mr. Moyle: That was before he was secretary.

Mr. Penfield: Well, he has testified that he was connected with the Teamsters.⁶

A. Could I hear the question again?

(Last question was thereupon read aloud by the reporter as hereinabove recorded.)

A. Yes. There were two locals in this area. The one at Idaho Falls was Local 852 and the one at Pocatello was Local 440.

Q. Do you know the full name of these organizations?

(Testimony of Lee Owen.)

A. Both of them are Teamsters, Chauffeurs, Warehousemen & Helpers Union Local, as I said, 852 and 440.

Q. When did you first come to Pocatello?

A. December 27, 1941.

Q. What were the circumstances that led to your coming to Pocatello?

Mr. Moyle: I object to that as immaterial.

Trial Examiner Riemer: Unless you can tie it up,——

Mr. Penfield: All right, I will rephrase the question.

Trial Examiner Riemer: ——the objection is sustained.

Q. (Mr. Penfield, continuing) Was there anything in connection with your employment by the Teamsters that led you to come to Pocatello?

Mr. Moyle: We object to that on the same grounds.

Trial Examiner Riemer: Sustained. [87]

Q. (Mr. Penfield, continuing) Were you directed to come to Pocatello by the Teamsters?

A. Yes, sir.

Q. Who directed you to come?

A. The International Representative in Los Angeles.

Mr. Moyle: Just a minute, please—I would like to have the record show that I have no opportunity to object. I don't know that it is important, but I think that the Examiner has ruled——

(Testimony of Lee Owen.)

Trial Examiner Riemer: Yes, I don't quite understand what you are driving at, Mr. Penfield.

Mr. Penfield: He has testified that he is connected with the Teamsters.

Trial Examiner Riemer: And he came here like thousands of organizers do all over the country.

Mr. Penfield: Well, no, I think that there are circumstances, and I think the testimony will show that the reason he was directed to come here has a material bearing on this.

Trial Examiner Riemer: Well, if you can show that it is pertinent and material, I think that it ought to be in the record.

Mr. Penfield: I think if he testifies as to the instructions that he received, it is material.

Mr. Moyle: It is hearsay.

Trial Examiner Riemer: Let me hear you make an offer on this, [88] Mr. Penfield.

Mr. Moyle: Off the record?

Trial Examiner Riemer: No, you can make it on the record.

Mr. Penfield: It is alleged in the complaint that the present organization which filed the amended charge is the successor of another labor organization that was in the Pocatello District, and I want to show through this witness that he came to Pocatello instructed to pick up the charter of this and the Idaho Falls Local and install the new charter; that he came to this area with those specific instructions on behalf of the Teamsters, and I think that is material in showing the successorship.

(Testimony of Lee Owen.)

Mr. Moyle: We object to it on the grounds that it is irrelevant, incompetent and hearsay.

Trial Examiner Riemer: Well, let's see, the pleadings put in issue the successorship of Local No. 440. The respondent says that he has no information or knowledge concerning it, and furthermore, that you have no knowledge that Local 440 is a labor organization. You admit that the Association is a labor organization, and I will entertain the offer. Go ahead, the objection is overruled.

Mr. Penfield: What was the last testimony?

(Last question and answer were thereupon read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) Did you have any instructions [89] with respect to Local 440?

A. Yes.

Q. What were those instructions?

Mr. Moyle: I take it that our objection goes to all of this?

Trial Examiner Riemer: Yes. You may have a standing objection to the entire line.

A. I was approached by Inor Mohn, who was international representative at Los Angeles, and asked that I should come to Salt Lake and meet Dexter L. Lewis, who was international representative in Utah and Idaho, and follow instructions which would be given me there.

I arrived in Salt Lake somewhere around the 8th of December, and after spending some time under

(Testimony of Lee Owen.)

International orders through the Middlewestern States, proceeded into Pocatello and I arrived here the 27th of December, 1941.

Dexter L. Lewis had authority from our International President, Daniel J. Tobin to pick up both charters, the one at Idaho Falls and the one at Pocatello, and a new charter would be granted immediately covering both areas.

This new charter was installed on January 16 in both areas, at a meeting prior to that time, which I think was around the 28th of December, 1941. The executive boards of both locals of the Idaho Falls and Pocatello——

Mr. Moyle: This, of course, would not be the best evidence of a vote. [90]

Trial Examiner Riemer: That is correct. Proceed.

A. ——voted to accept the International ruling.

Mr. Moyle: May the record show that we object on the ground that it is not the best evidence and hearsay and incompetent.

Trial Examiner Riemer: Let the record so show.

A. (Witness continuing) ——Since that time, both areas have operated as Local 983. Financial statements have been made to the International Union. We have complied with the by-laws of the International Union since that time. We also have the charter which we are willing to bring up for evidence to prove that statement is correct.

Q. (Mr. Penfield, continuing) Did I understand that you testified, Mr. Owen, that there were

(Testimony of Lee Owen.)

meetings of the membership of both Local 440 and the Idaho Falls Local, at which the members took a vote?

A. That is correct, to comply with the International Ruling.

Q. Did you attend both of those meetings?

A. I did, yes, sir.

Mr. Moyle: I take it, Mr. Examiner, our position could not be prejudiced in any way by anything the Unions may have done after the dates upon which the alleged violations of the Act by the Respondent occurred?

Trial Examiner Riemer: I don't understand your question, Mr. Moyle. [91]

Mr. Moyle: Well, I would like to make a motion to strike the testimony of this witness up to this moment on the grounds that it is incompetent, irrelevant and immaterial, and hearsay, and that with reference to the last two questions and answers, which relate to matters that occurred some months after the violations alleged in the complaint, by no means could the Respondent be prejudiced by what the Union might have done afterwards.

Mr. Penfield: Well, the only purpose of this, the original charge was filed by Local 440 and amended charge was filed by Local 983, and the only purpose of this is to show the successorship.

Trial Examiner Riemer: Is the original charge in evidence?

Mr. Penfield: Yes, it is.

Trial Examiner Riemer: May I see it, please?

(Testimony of Lee Owen.)

Mr. Penfield: Yes.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Mr. Moyles: We further object to testimony from this witness on the ground that there is nothing as shown by the evidence, that is, by any competent evidence, that Local 983 legally or otherwise, inherited any of the rights or privileges of Local No. 440. So far as No. 852 of Idaho Falls is concerned, that seems to be outside the grievances stated [92] in the charge, and we take the position that if there is any grievance here, that rests in Local No. 440, and not in Local 983, and if Local No. 440 has been dissolved and its charter cancelled, and it has ceased to exist, so far as the grievances complained of by that Local, this complaint should be dismissed.

Mr. Penfield: Well, I propose to show by Mr. Owen the exact circumstances. That is just exactly what we are leading up to. As far as the objections with respect to there having been no evidence, the present Local has succeeded the other Local, he has already testified that he came out here for the purpose of picking up those charters and installing the others. I think that if he is permitted to finish the story, as to just exactly what happened, this part will be cleared up.

Trial Examiner Riemer: The objection is overruled.

(Testimony of Lee Owen.)

Mr. Moyle: May the objection contain this further ground, that it now affirmatively appears through testimony of this witness, that the charter of Local 440 was cancelled and picked up and ceased to exist thereafter.

Mr. Penfield: I think that the record shows that.

Q. (Mr. Penfield, continuing) Will you continue, and explain exactly the circumstances under which these charters were picked up.

Mr. Moyle: This is all over our same objection.

Trial Examiner Riemer: Yes, your objection is a standing one. You may have an objection to all adverse rulings. [93]

A. Under International By-laws, the executive board of the Teamsters International has the power at all times to put a Local under receivership that is not functioning according to the by-laws of the Teamsters Union, which transpired in this case. The Local was not functioning under the by-laws, and president Tobin authorized that these charters be picked up, and the local be put under receivership, and I might state that even though Local 440 would be out of existence, all Teamsters' Locals are responsible to the International, and your charges would still be carried on by the International even though other charters had been put in here. It states clearly in the International By-laws, that they are responsible for all locals.

Now, we assumed all obligations of Local 440 and 852 when this new charter was put in here. In

(Testimony of Lee Owen.)

fact, there were bills paid back to 1937 by Local 983.

Q. (Mr. Penfield, continuing) Mr. Owen, you might clarify it,—what was the date upon which the charter in Local 983 was installed?

A. January 16. That is when it was issued, and it was installed, I think, on the following Monday.

Q. What happened to the records and property of Locals 440 and 852?

A. They were turned over to the International Agent. They were turned over to me. They were turned over to the International, with exceptions of a few records that I have turned over to [94] you, and a few that we have on file.

Q. Were these records kept by the International?

A. Yes, they are still in the hands of the International to my knowledge, with the exception as I say, of a few that we turned over to you, in this case, and a few that we have got pertaining to another case.

Q. You testified that Local 983 was installed January 16, I believe?

A. That is correct.

Q. Were any records turned over to Local 983?

A. Prior to that time, yes, we got some of the records right after the meeting, when the membership voted to abide by the International ruling, and the rest of the records were turned over at different times up until the charter was installed.

Q. Who were they turned over to?

A. To me or Dexter Lewis, one of the two.

(Testimony of Lee Owen.)

Q. In what capacity were you acting at that time?

A. Secretary-treasurer and business agent under the International ruling where they have put the Local under receivership.

Q. Local 983 had not been——

A. I was acting corresponding secretary-treasurer and business agent of Local 440 until the charters were changed, and I paid bills under Local 440 up until the new charter was installed.

Q. In what capacity did you act when the new charter was [95] installed?

A. The same thing, secretary-treasurer and business agent.

Q. How did you receive your appointment?

A. By the International Union.

Q. Were the records of Local 440 turned over to you?

A. That is correct. 440 and Local 852.

Q. All the books and records?

A. Correct.

Q. All the money? A. All the money.

Q. What was the purpose of Local 440?

A. The purpose of Local 440 was to organize everybody coming into the Teamsters' jurisdiction in this locality.

Q. What was the Teamsters' jurisdiction?

A. The Teamsters' jurisdiction under 440 was Pocatello and vicinity, and I think it extended as far as Ketchum, Sun Valley, and Twin Falls—in fact, I know that it did.

(Testimony of Lee Owen.)

fact, there were bills paid back to 1937 by Local 983.

Q. (Mr. Penfield, continuing) Mr. Owen, you might clarify it,—what was the date upon which the charter in Local 983 was installed?

A. January 16. That is when it was issued, and it was installed, I think, on the following Monday.

Q. What happened to the records and property of Locals 440 and 852?

A. They were turned over to the International Agent. They were turned over to me. They were turned over to the International, with exceptions of a few records that I have turned over to [94] you, and a few that we have on file.

Q. Were these records kept by the International?

A. Yes, they are still in the hands of the International to my knowledge, with the exception as I say, of a few that we turned over to you, in this case, and a few that we have got pertaining to another case.

Q. You testified that Local 983 was installed January 16, I believe?

A. That is correct.

Q. Were any records turned over to Local 983?

A. Prior to that time, yes, we got some of the records right after the meeting, when the membership voted to abide by the International ruling, and the rest of the records were turned over at different times up until the charter was installed.

Q. Who were they turned over to?

A. To me or Dexter Lewis, one of the two.

(Testimony of Lee Owen.)

Q. In what capacity were you acting at that time?

A. Secretary-treasurer and business agent under the International ruling where they have put the Local under receivership.

Q. Local 983 had not been——

A. I was acting corresponding secretary-treasurer and business agent of Local 440 until the charters were changed, and I paid bills under Local 440 up until the new charter was installed.

Q. In what capacity did you act when the new charter was [95] installed?

A. The same thing, secretary-treasurer and business agent.

Q. How did you receive your appointment?

A. By the International Union.

Q. Were the records of Local 440 turned over to you?

A. That is correct. 440 and Local 852.

Q. All the books and records?

A. Correct.

Q. All the money? A. All the money.

Q. What was the purpose of Local 440?

A. The purpose of Local 440 was to organize everybody coming into the Teamsters' jurisdiction in this locality.

Q. What was the Teamsters' jurisdiction?

A. The Teamsters' jurisdiction under 440 was Pocatello and vicinity, and I think it extended as far as Ketchum, Sun Valley, and Twin Falls—in fact, I know that it did.

(Testimony of Lee Owen.)

Q. Whom did that organization admit to membership?

A. It admitted all warehousemen, truckdrivers, dairy employees, inside and outside. I think that covers almost everything.

Q. Did it admit to membership employees of oil companies? A. That is correct.

Q. Was that membership limited to the truck drivers working for oil companies? A. No.

[96]

Q. What employees of oil companies did it admit?

A. I think—in fact, I know, on the Pacific Coast, we have refineries that we have organized straight through—everything, even office employees.

Q. I was asking with respect to Local 440.

A. The same thing would apply here.

Q. (Trial Examiner Riemer) As I get your testimony, then, Local 440 would have had jurisdiction over any employees working for the Refinery?

A. With exception of mechanics, electricians—in other words, any International Union that would have a charter in here that would cover workers out there pertaining to their craft, naturally would come under theirs, but I think electricians and machinists would be the only two that have an International Representative in this area.

Q. (Mr. Penfield, continuing) Did the members of Local 440 become members of 983?

A. Yes.

(Testimony of Lee Owen.)

Q. I will show you some documents which purport to be application blanks, and will you state if you know what they are?

A. These are application blanks used by the International Local Unions, and on the bottom of them, there is a receipt which is practically the same as the top here, and these are a part of our records. In fact, all of the members that make application make them on either these, or we have new applica- [97] tion blanks which have come into effect. This reads,

“International Brotherhood of Teamsters,
Chauffeurs, Stablemen and Helpers”——

In September of 1940, our charter was changed to “International Brotherhood of Teamsters, Chauffers, Warehousemen & Helpers,” and we had orders to use up the old blanks and use the new ones afterwards, and I know that there were a lot of old ones left, and I used some of them up in January of this year. This is from our official records. I know when they made application.

Q. I ask you to look through these. Can you tell me if all of those were part of the official records of Local 440 that were turned over to you?

A. Yes.

Mr. Penfield: I will offer these in evidence as Board's Exhibit 5.

Mr. Moyle: We object to the offer of Board's Exhibit 5 on the grounds that there appears on these sheets—blanks—notations of various kinds in hand-

(Testimony of Lee Owen.)

writing other than the handwriting of the applicant, and there appears to be some information that appears to be unintelligible without some further explanation.

Trial Examiner Riemer: May I see it, please?

Mr. Moyle: We would like the record to show that none of the writing has been in anywise identified, and that the offer [98] at this time is incompetent.

Mr. Penfield: I am offering it merely to show that they are part of the official records of Local 440, which were taken by Local 983, and that they do contain the names of certain individuals.

Trial Examiner Riemer: Mr. Penfield, if you offer them as original application cards of those named, I think that they ought to be further identified.

If you offer to show that they are part of the original records which this witness acquired, I don't see the point of the offer.

Mr. Penfield: Well, I think that they show the names of certain individuals on application cards as applying for membership in this particular union, and these were part of the records of the Union which were turned over.

Trial Examiner Riemer: Well, that is undoubtedly your position. You haven't accomplished it yet, and ruling is reserved.

Mr. Penfield: Well, I don't know that I understand your last statement.

Trial Examiner Riemer: Well, ask the witness

(Testimony of Lee Owen.)

by further questions to explain what it is, who these individuals are, and when they were received, and came into the possession of the witness, and so on.

A. In the first place, Brandt was secretary-treasurer, because I relieved him when I came in here, and these applications are [99] made in the applicant's own handwriting. They signed them themselves.

That is the procedure that we follow. Now, I can't identify these that they did it, because I didn't receive these until after they were done, but that is the procedure in the International, that applicants sign their won applications, and I think that the individuals that are brought on the stand can vouch whether that is their signature or whether they had them signed, but the initiation date is put in here. I imagine by Mr. Brandt, as secretary.

Mr. Moyle: We object to what the witness imagines.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) What are the names on there? Who are those persons named on there?

A. The names that are on here?

Q. Yes. A. Well, I think——

Q. Do you know?

A. Just a minute. I am not going to answer until I look here. With the exceptions of one or two, they are all members of our Local.

Q. At the present time?

(Testimony of Lee Owen.)

A. No, there are some of them that have transferred to other Locals. I can tell you the ones that are members, if you like.

Q. Do you know whether or not any of those individuals [100] ever worked for the Idaho Refining Company?

A. Only as the records show that we have. They haven't worked, I don't think, for the Idaho Refinery since I came in here.

Q. Do you know whether they ever did?

A. Only by our records.

Q. What records?

A. The records that we have, our initiation books, and union dues books.

Q. Have any of these individuals ever become members of Local 983?

A. Yes. James Ayres, S. R. Burkholder was, Guy Campbell, Boyd Cornia still is,—Victor Ellingford—

Q. Is or was?

A. No, became members,—Victor Ellingford still is, I think John Evans, Chris Gregerson, Arthur Heckert, H. H. Hendrickson, Carl Hill, Stanley Merrill, Robert Patterson, and Myron Whitesides,—most of them are still working in our jurisdiction under Local 983.

Q. I will ask you to look through those and tell me if it doesn't appear that each of the individuals named is an employee of the Idaho Refining Company according to that application?

Mr. Moyle: I object to that as incompetent.

(Testimony of Lee Owen.)

Mr. Penfield: Well, I am asking on the basis of this application. [101]

Trial Examiner Riemer: Overruled.

A. On the basis of the application, it appears that they all worked at the Idaho Refinery.

Mr. Moyle: May we have the further objection that if the witness is just reading from the application form, the application form itself is the best evidence.

The Witness: That is correct.

Trial Examiner Riemer: Of course, that is what it states right on there.

Q. (Mr. Penfield, continuing) Well, now, you have testified that those are a type of application card used by the organization?

A. That is correct.

Q. In that type of organization card, is there a place for the name of the company—the company in which the particular person is employed?

A. Yes.

Mr. Moyle: We have that same objection, that the form speaks for itself.

Trial Examiner Riemer: Yes, you may have that objection.

Q. (Mr. Penfield, continuing) In this particular form is the name of the employer written in?

A. Yes.

Q. What name appears?

Mr. Moyle: We object to that as not the best evidence, and [102] simply calling for hearsay.

This witness has stated that he knows nothing ex-

(Testimony of Lee Owen.)

cept what appears on the paper, and the court has reserved its ruling on the admission of the paper,

Mr. Penfield: I was merely trying to identify it a little further, is all.

Mr. Moyle: Yes, but it isn't identifying it by putting in evidence the contents.

Trial Examiner Riemer: The objection is sustained.

Mr. Penfield: As I understand the Trial Examiner's ruling,—

Trial Examiner Riemer: May I see them, please?

Q. (Trial Examiner Riemer) Mr. Owen, do you know what this legend is that appears on the upper right corner of this exhibit?

A. That is the date that they were initiated.

Q. Is that an abbreviation for initiation — "Init"?

A. That is correct.

Q. Whose writing is that, do you know?

A. No, I don't.

Q. Is that a common or accepted practice to write a legend on the application forms?

A. Yes, all our new application forms, there is a space put in for the date of initiation, the date entered, and different things, but on the old cards there wasn't.

Trial Examiner Riemer: The exhibit may be admitted and [103] marked as Board's Exhibit 5.

(Whereupon the documents hereinabove referred to were marked and received in evidence as Board's Exhibit 5.)

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-A

Application Blank

[Cut]

Paid 6.25

Init Oct - 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

.....19....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature James Alferts

Address 622 West Wyeth

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-B

Application Blank

[Cut]

519-07-3969

Init. Oct-27-1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

10 - 21 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature S. R. (Pat) Burkholder

Address 352 South 3rd

Occupation Transport Operator

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-C

Application Blank

[Cut]

Social Sec. 509-07-6062

Init. Nov. 24 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Guy Campbell

Address 220 W Young

Occupation Truck Driver

Employed at Idaho Refining

Age 29

Health OK

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-D

Application Blank

[Cut]

518-18-4368

Init. Nov. 10, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

..... Union No.

10 - 1 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Boyd Cornia

Address 756 E. Lander, Pocatello Ida

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 41

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-E

Application Blank

[Cut]

519-07-8065 Social Security

152

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Howard L. Davis

Address 820 North Main

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 29

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-F

Application Blank

[Cut]

Paid 6.25

Init. Nov. 24 - 1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Wayne Douglas

Address 854 N. Aurther

Occupation Driver

Employed at Pocatello Idaho Ref. Co.

Age 21

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-G

Application Blank

[Cut]

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9-29-41

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Victor Ellingford

Address 645 N. Lincoln, Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 33

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-H

Application Blank

[Cut]

543-10-5265

Init. Oct 27 - 1941

\$6.25 Pd. Oct. 9 - '41.

~~By~~:

M. Nokes

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature John P. Evans

Address Box 910

Occupation Truck Driver

Employed at Idaho Ref. Co.

Age 38

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-I

Application Blank

[Cut]

518-05-8889

Init. Oct. 27 -1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9-29 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature Leonard Fowler

Address 1334 So. 2nd

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 25

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-J

Application Blank

[Cut]

519-01-6368

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

.....19....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Chris R. Gregerson

Address R.F.D. #1 N. Pocatello Idaho

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-K

Application Blank

[Cut]

Init. 11-24-41

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature A. L. Heckert

Address 355 So. 7th St.

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-L

Application Blank

[Cut]

S.S. 519-07-3888

Initiation fee Paid.

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

Sept. 30 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature H. H. Henriksen

Address 332 Washington

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-M

Application Blank

[Cut]

519-07-3770

519-07-3770

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

..... Union No. 440

Sept. 29 - 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature Carl E. Hill

Address 345 So. Grant

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 29

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-N

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

Oct 2 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature A. Stanley Merrill

Address 1342 No. Hays Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-O

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

Teamsters Union No. 440

519-12-2322

Oct. 2 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature R. C. Miller

Address Pocatello, Idaho P.O. 746

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 34

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-P

Application Blank

[Cut]

540-03-0355

Init. Oct 27 - 1941

Social Security

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9 - 29 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Robert W. Patterson

Address 355 South 7th Pocatello

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 28

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-Q

Application Blank

[Cut]

Init. Oct. 27 - 1941

International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

9-29-41

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, I hereby make application for admission to membership.

Signature John Ray

Address 417 West Bridges

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 23

Health OK

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-R

Application Blank

[Cut]

518-10-8863

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

Oct. 21 1941

Desiring to become a member of the above Union
of the International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers, I hereby
make application for admission to membership.

Signature Leland W. Stanford

Address 623 So. Sixth, Pocatello, Ida.

Occupation Driver

Employed at Idaho Refining Co.

Age 30

Health

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-S

Application Blank

[Cut]

Init. Nov. 10 - 1941

International Brotherhood of Teamsters,
Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

S.S.A. 518-05-6008

.....Union No. 440

Sept. 30 1941

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature P. P. Stanger

Address Pocatello Idaho

Occupation Truck Driving

Employed at Idaho Refining Co.

Age 32

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

BOARD'S EXHIBIT No. 5-T

Application Blank

[Cut]

528-05-6303

Init. Oct. 27, 1941

International Brotherhood of Teamsters,

Chauffeurs, Stablemen and Helpers

Initiation Fee, \$12.50

.....Union No. 440

.....19....

Desiring to become a member of the above Union of the International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, I hereby make application for admission to membership.

Signature Myron D. Whitesides

Address 322 West Carson, Pocatello, Idaho

Occupation Truck Driver

Employed at Idaho Refining Co.

Age 31

Health Good

Voucher Brandt

Note: Initiation fee must accompany application.

(Testimony of Lee Owen.)

Mr. Moyle: We would like the record to show at this time that we claim at least the right to cross examine, or to have some evidence produced about which we could cross examine about the signatures on each of the applicants on these application blanks on the dates on which the applicants actually signed.

Trial Examiner Riemer: You will have that right before the hearing is over.

Mr. Penfield: I might state that we have some other evidence in connection with the union membership of these employees. I would like to get these in at this time because they are part of the union records, and Mr. Owen has custody of them.

Q. (Mr. Penfield, continuing) After you became business agent and secretary of Local 983, were you ever approached by any employees of the Idaho Refining Company? A. Yes.

Q. What were the circumstances?

A. On numerous occasions, they wanted to know if there wasn't something that we could do to bring this case to a head.

Q. Do you know who some of these employees were?

A. I think that I know practically all of them.

Q. Can you give us the names of some of them?

A. Well, Boyd Cornia, Arthur Heckert and John Evans and [104] Chris Gregerson, Stanley Merrill, Guy Campbell—I think practically all of them that were in this locality when I came here.

Q. What did they say?

(Testimony of Lee Owen.)

A. Well, they wanted to know what they could do to get this settled, for one thing.

Q. What do you mean by "this thing"?

A. Where they got discharged from the Idaho Oil Refinery, they told me that the case had been taken up with the National Labor Relations Board, but nothing had been done about it at that time, so that is when we filed an amended complaint.

Q. Following the time when you became business agent for Local 983, did you ever attempt to contact the company, the Idaho Refining Company?

A. Yes.

Q. What attempts did you make?

A. Oh, around January 3 or 4, I think it was; somewhere around that time, Dexter L. Lewis and myself drove out to the Idaho Oil Refinery on two different occasions, in a row, and were informed that Mr. Moyle and Mr. Copening were down in Salt Lake, and I think the second time, they were in Boise, but the telephone operator got them, and I called and talked with Mr. Moyle over the telephone, which was considerably later, about around the 23d of January, I think it was, and Mr. Moyle stated that he had nothing to talk with me at all, that it was entirely in the hands [105] of Henry Moyle at Salt Lake.

Q. Did you ever have any further contacts with the company?

A. That is the only contacts that I have had.

Q. What is the purpose of Local 983?

A. The purpose of Local 983 is to organize all

(Testimony of Lee Owen.)

workers in Idaho Falls and vicinity—no, Pocatello, Idaho Falls and vicinity, and the State of Idaho and vicinity, that is the way the charter reads that was granted to us by the International.

Q. Is that the same group of workers that Local 440—

A. With the addition of some men, yes.

Q. What additions?

A. The additions are the Cooperative Creamery at Idaho Falls, Shelley and Firth, Midland Elevator Employees at Idaho Falls, and truck drivers at the Gun Plant and Airport here, with some minor additions that I don't recall right now.

Q. Does Local 983 have contracts covering truck drivers of any oil companies?

A. Not in our territory, no,—no contracts. [106]

Cross Examination

Q. John Ray?

A. John Ray is,—I don't think that he has ever been a member of Local 983.

Q. Leland W. Stanford?

A. I don't know him, either.

Q. He hasn't belonged to your Local?

A. As far as I know, he don't, no.

Q. You don't know anything about him, and P. P. Stanger?

A. I don't recall him, either.

Q. As far as you know, he hasn't joined your 983?

A. As far as I know, he hasn't, no.

[122]

Mr. Penfield: I would like to call Mr. Anderson.

JOHN ANDERSON

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: John Anderson.

Trial Examiner Riemer: Where do you live?

The Witness: 1504 South Fourth, Pocatello.

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Idaho Refining Company.

Q. In what capacity?

A. Helper on the cracking unit.

Q. Describe just what your duties are on that job, if you will, please.

A. Well, it is control of fires, pressures and temperatures and levels, and just routine check-up in the plant every few minutes.

Q. Do you have a series of gauges to watch and wheels to turn?

A. Pressure gauges and valves and temperatures.

Q. When did you first come to work for the company?

A. Well, I first came up here for the Alcol Combustion Company. That was in April, 1938, and I worked there until about the middle of July, 1938.

[138]

Q. When you first came up, you were not on the payroll of the Idaho Refining Company?

(Testimony of John Anderson.)

A. No, it was the Alcol Combustion Company that had the contract to build the plant.

Q. When did you first go on the payroll of the Idaho Refining Company?

A. In August, 1938.

Q. Did you commence work on the same job on which you are now working? A. No.

Q. What job did you have?

A. I started work on maintenance—pipe fitting.

Q. What do you mean by pipe fitting?

A. Well, any time the line blows out, they have to have a new line, or an additional line or something.

Q. How long did you work in that capacity?

A. I worked there about three months.

Q. Then what job did you get?

A. I went on the treating plant—that is, treating gasoline.

Q. Is that the same job that you have at the present time?

A. No, that is treating gasoline.

Q. What do you mean by that?

A. We treat it with chemicals—caustics, and sweeten it up before it goes to storage.

Q. How long did you work at that job?

[139-140]

A. I worked there about a year.

Q. Then what job did you take?

A. Then I went on the cracking unit, the job that I am on now.

(Testimony of John Anderson.)

Q. You have been working on that job ever since? A. Yes.

Q. Are you a member of the Idaho Refining Company Employees' Benefit & Labor Association.

A. Yes.

Q. When did you become a member?

A. Well, whenever it started, I think in the fall of 1938 at started.

Q. What was your first knowledge of an attempt to form an employees' association?

A. Well, the employees just got it up among the employees in the plant, and they formed the Association.

Q. Do you recall just when that was?

A. Well, it was a short time before we had the first meeting.

Q. Do you recall any particular person who was particularly active?

A. Well, George Mann and George Hibbler.

Q. Who is George Mann?

A. He was chief chemist at that time.

Q. George Mann? A. George Hibbler.

[141]

Q. Who was George Mann?

A. He was a helper on the cracking unit.

Q. Do you know an employee by the name of Gaudet?

A. Val Gaudet, he was superintendent at that time.

Q. Was he active in the discussion concerning the formation—— A. No.

(Testimony of John Anderson.)

Q. ———of the organization? A. No.

Q. Do you recall attending a meeting at which the formation of the Employees' Association was discussed? A. Yes.

Q. When was that meeting held?

A. Well, I don't remember the month—it was in the fall of 1938, at the refinery.

Q. How did you receive notice of it?

A. Well, they just passed it around the plant and put it on the bulletin board that meeting,—for a discussion of it.

Q. Did you see any notice on the bulletin board?

A. Well, I don't recall whether it was, or just passed around the plant.

Q. Do you recall from whom you heard of it?

A. No.

Q. What time was that meeting held?

A. I imagine around eight o'clock in the evening, seven or eight o'clock.

Q. Where was it held? [142]

A. In the refining office.

Q. About how many persons were there?

A. Well, probably everyone that was employed by the refinery except those on shift who could not get off.

Q. Do you recall about how many persons?

A. Well, I would say there were 40 or 50.

Q. Did that include employees in the office?

A. Oh, I think some of the employees in the office were there.

(Testimony of John Anderson.)

Trial Examiner Riemer: I am sorry, I lose part of your answer when your voice falls.

Will you read the answer?

(Last answer was thereupon read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Try to keep your voice up.

Q. (Mr. Penfield, continuing): Who presided at this meeting?

A. I think George Mann presided.

Q. Was it George Mann or George Hibbler?

A. Well, it was one of the two.

Q. Are they both named George?

A. George Mann and George Hibbler.

Q. What was said by you at this meeting?

A. Well, they—we all discussed the benefits of having an Association among the fellows.

Q. Did the person presiding discuss it? [143]

A. Well, George Hibbler had been in one refinery where they had it before, and he told us about the advantages it offered them.

Q. What did he say the advantages were?

A. Well, I think our first dues were a dollar a month until we had built up a cash reserve, and it offered so much a week if we were sick, and if we were hurt on the job or something, we got the benefits, and then we had a social and welfare fund in there.

Q. What was the purpose of the social and welfare funds?

(Testimony of John Anderson.)

A. Well, if any member of the Association's mother or father or immediate member of his family died, the Association sent flowers, or something like that.

Q. Did he show any documents that purported to set forth the constitution or by-laws for an organization?

A. Well, at that time, he didn't.

Q. Was he reading from any—

A. No, I think it was just an oral statement.

Q. Did he tell you that they were seeking to set up such an organization as they had at the other company—

A. Among the fellows in the refinery.

Q. Did he say who were to be members of the Association?

A. Well, any member on the payroll of the Idaho Refining Company.

Q. Did that include foremen and supervisors?

[144]

A. I expect that it could have.

Q. Well, did it?

A. Well, I know a lot of them belonged to it. In fact, I would say practically all of them belonged.

Q. Were any supervisors or foremen at the meeting?

A. Well, George Hibbler, I know that he belonged, and he and Edward V. Smith, who is superintendent now.

Q. Were they at the meeting?

(Testimony of John Anderson.)

A. Yes, but Smith wasn't superintendent at that time, he was an operator.

Q. Was Kermit Rise at the meeting?

A. I think so.

Q. Was Mr. Copening at the meeting?

A. I don't think that Mr. Copening was with the company at that time.

Trial Examiner Riemer: Who is Mr. Rice?

The Witness: Well, he has charge of the trucks some way.

Trial Examiner Riemer: I see.

Q. (Mr. Penfield, continuing): Did he have at that time? A. I think so.

Q. Were any other officials or bosses there?

A. Well, I think practically everyone from the refinery was there.

Q. Does that include officials and bosses?

A. I think so. [145]

Q. Was there any balloting at this meeting?

A. Yes.

Q. What was voted on?

A. We voted whether we wanted to be in it, or whether we didn't.

Q. What was the result of the vote?

A. It carried 100 per cent. for it.

Q. Did all of the persons present at the meeting participate in the vote? A. Yes.

Q. Were any by-laws adopted at this meeting?

A. We were going to draw it up. We hadn't had time to make them yet.

(Testimony of John Anderson.)

Q. Were you present at the later meeting where the by-laws were adopted? A. Yes.

Q. When were the officers elected?

A. After the first meeting, after we voted on the Association.

Q. Before the by-laws were drawn up?

A. Well, I think at that time we had by-laws, or were drawing them up.

Trial Examiner Riemer: I want to get this straight. This was a meeting held in the fall of 1938, at which Mr. Hibbler told of the benefits of an inside union?

The Witness: It wasn't a union at all. It was just an [146] Association.

Trial Examiner Riemer: All right, we will just call it an Association, and was it at this first meeting that you attended that those officers were elected?

The Witness: No. We voted on the Association at first, whether we wanted it or not—the fellows in the refinery.

Trial Examiner Riemer: And the vote was to have an Association?

The Witness: It carried 100 per cent.

Trial Examiner Riemer: And officers were elected at a later meeting?

The Witness: Yes, sir.

Q. (Mr. Penfield, continuing): Did Mr. Hibbler say anything with respect to the Association bargaining for the workers? A. No.

Q. With respect to wages and hours?

(Testimony of John Anderson.)

A. No.

Q. Was the name of the organization selected?

A. It was the Idaho Benefit Association——

Q. Was that the full name, Idaho Benefit Association? A. That was the full name.

Trial Examiner Riemer: Will you fix the time of these various incidents?

Mr. Penfield: I was speaking of this first meeting.

Trial Examiner Riemer: That is what I wanted to know. [147]

Q. (Mr. Penfield, continuing): Was that at the first meeting when the name was selected?

A. Yes.

Q. Was there anything in the title that said "Labor Association"? A. No.

Q. Was the name later changed?

A. I think so.

Q. Do you recall when that name was changed?

A. No, it was two years or more ago.

Q. Did you attend the meeting at which the name was changed? A. Yes.

Q. Who moved to make the change?

A. Well, I don't know whose idea it was,—I can't recall what was brought up about it—why we changed it.

Q. Do you have any recollection as to why it was changed?

A. No, I don't, because we never used it for a bargaining agency at all with the company.

(Testimony of John Anderson.)

Q. Do you recall who moved to change the name at this meeting?

A. Yes, I recall it was moved, and we voted on it.

Q. Who made the motion?

A. I don't know who made the motion. It is several years ago.

Q. It is your testimony this was about two years after——

A. Just about. [148]

Q. ——the first meeting?

A. I think that the name has been changed just about two years.

Q. Have you been a member of this organization ever since that first meeting?

A. Ever since the first meeting.

Q. Have you attended the meetings regularly?

A. Well, for a while we went to them regularly, but the attendance kind of dropped off, so we just held one about every two or three months.

Q. Where were they held?

A. We always held them in the refinery office, so we built a new bath house, and after that, we held them in the change room,—a regular meeting room there.

Q. Was that change room on the company property?

A. Yes.

Q. Have you ever held any office in the association?

A. I was on the grievance committee once.

Q. What was the purpose of the grievance committee?

(Testimony of John Anderson.)

A. Well, if something needed doing around the plant, and the supervisors didn't take care of it properly, we would go and see Mr. Moyle and see if he would do something about it.

Q. What sort of things?

A. Oh, some hazards or dangerous things around the plant that should be fixed.

Q. Just matters of safety? [149]

A. Personal safety for the workers.

Q. Did you ever take up any grievances of individual workers? A. No.

Q. Did you ever take up any grievances concerning wages and hours? A. No.

Q. How long were you a member of the grievance committee? A. Six months.

Q. What time was that?

A. Well, about a year after it started.

Q. That would be in 1939? A. 1939.

Q. In the spring of 1941, do you recall any dissatisfaction among the employees concerning the wage scale?

A. Well, I know we discussed wages, and decided to try and get more money.

Q. By "we", what employees?

A. Well, just a group of the fellows.

Q. Where were they employed?

A. The Idaho Refining Company.

Q. In what connection?

A. Well, in all branches,—the boiler house, the cracking unit, the treating plant, loading dock.

Q. What about the truck drivers?

(Testimony of John Anderson.)

A. We didn't bother with them, because we didn't know anything [150] about driving a truck or anything like that.

Q. You said there was a discussion among the other employees during the spring of 1941?

A. Yes, sir.

Q. Was that a discussion at a meeting of the Association? A. No.

Q. Were any committees formed at that time?

A. Yes, sir.

Q. Was this a committee of the Association?

A. No, sir.

Q. Who proposed the committee?

A. Well, Del Peters and Max Pope and K. Mills and myself.

Q. In what capacity were these persons you have just named employed?

A. Well, Max Pope was in the boiler house, Del Peters was in the treating plant, K. Mills, he was an operator.

Q. What was the purpose of this committee?

A. To go and talk to Mr. Moyle and try to get a raise,—more money.

Q. Did the committee prepare a wage scale?

A. Yes.

Q. Did you meet with Mr. Moyle?

A. Yes, sir.

Q. Do you recall when the meeting was held?

A. It was sometime in May of 1941. [151]

Q. Did you present him with this new wage scale? A. Yes, sir.

(Testimony of John Anderson.)

Q. Were the wages of truck drivers and mechanics included in the schedule that you presented? A. They were not.

Q. Were the wages of the office force included?

A. No, sir.

Q. What did Mr. Moyle tell you?

A. Well, he said it was satisfactory to him, and he would go down and talk to Mr. Henry D. Moyle about it, that he could not authorize an increase until he went to Salt Lake.

Q. Did you have a later meeting with Mr. Moyle?

A. Yes, sir; he called a meeting.

Q. He called a meeting?

A. He wanted to discuss the wage problem with us.

Q. Was that a meeting of this same committee?

A. No, that was with everyone concerned on the wage raise.

Q. How were you notified of this meeting?

A. I think that he put it on the bulletin board that he would talk to us in the refinery office at a certain time.

Q. How much later than the first meeting with Mr. Moyle was this?

A. I would say ten days to two weeks.

Q. Did you attend this meeting?

A. Yes, sir. [152]

Q. Were any of the truck drivers or mechanics present?

A. Well, the best I recall, several truck drivers came in and Mr. Moyle said that he would have

(Testimony of John Anderson.)

a meeting with them a few days later and take up their problem with them.

Q. What did Mr. Moyle tell you at this meeting?

A. Well, he told us how much raise we were going to get.

Q. Was it the amount that you had set forth in your wage schedule?

A. Not quite, no, sir.

Q. Was it less? A. A little bit less.

Q. Was there anything,—was there any discussion,— A. No, sir.

Q. —of the wage schedule presented?

A. No, sir.

Q. Was this schedule to apply only to the—

A. To the refinery proper, and did not include the drivers or the office force.

Q. Was any balloting conducted at this meeting?

A. Well, yes, sir; we voted whether—Mr. Moyle wanted us to sign an agreement not to ask for an increase in wages for one year. That was for the whole group,—any single person could come in and talk to him and speak for himself and try to get more money, but not as a whole group, and the motion carried not to ask for any more money for one year. [153]

Q. (Trial Examiner Riemer): For another year?

A. For one year, yes, sir.

Q. (Mr. Penfield, continuing): Was it understood that this agreement was to be put in writing?

(Testimony of John Anderson.)

A. Well, it may have been. I didn't sign anything.

Q. Well, I mean, were you told that this agreement was to be put in writing?

A. I think that he wanted a written agreement. It would be about the only thing that would be binding.

Q. Who were to sign that agreement?

A. I think the president of the Association, because after all, we were all members of the Association.

Q. But the agreement was to be limited to employees of the refinery proper? A. Yes.

Q. Did you ever have anything to do with the preparation and signing of this agreement?

A. No, sir.

Trial Examiner Riemer: That raises a number of questions, but go ahead.

Mr. Penfield: Some of them might be cleared up later.

Q. (Mr. Penfield, continuing): Do you know if the truck drivers and truck mechanics got any increase?

A. I think Mr. Moyle met with them in a few days, and I believe that they got a raise. [154]

Q. Did you attend that meeting?

A. No, that was the truck drivers and mechanics and grease monkeys.

Q. Does your work throw you in contact with the truck drivers? A. Very little.

Q. Does the work of other refinery proper employees throw them in contact with truck drivers?

(Testimony of John Anderson.)

A. Well, with exception of the loading dock, not very often.

Q. How did it happen that on this committee that was formed to get wage increases, the truck drivers and mechanics were not considered?

A. Well, in the refinery, we have always worked under a superintendent, and he was the superintendent of the loading dock and the treating plant and the cracking units and all the yardmen.

Q. He had no jurisdiction at all over the truck drivers and we worked our agreement and wage schedule through Mr. Miller, who was superintendent at that time and we had no dealings with the truck drivers. He had no jurisdiction over the truck drivers.

Q. Do you know Mr. August Rosqvist?

A. I don't know him personally. I have heard of him through the papers.

Q. Have you ever seen him?

A. I saw him at one time.

Q. Did he ever attend meetings of the Association at which you [155] were present?

A. He spoke to us in the refinery offices one night.

Q. Was this a regular Association meeting?

A. I think that he contacted the officials of the company and they invited him to come out and speak to us.

Q. When was this meeting held?

A. Well, I think that was in the spring, about 1939.

(Testimony of John Anderson.)

Q. Do you know who Mr. Rosqvist was?

A. Yes, after he was introduced to us, we did.

Q. Who was he?

A. Well, he had something to do with the Labor Temple here—the A F L.

Q. Who presided at this meeting?

A. Well, I believe it was George Mann. I believe that he was president of the Association at that time.

Q. Who spoke at the meeting?

A. Well, Mr. Rosqvist spoke, and some other Union representative with him spoke.

Q. What was the substance of Mr. Rosqvist's remarks?

A. He was trying to get us to join the Union.

Q. Were there any questions asked?

A. Yes, we asked what advantages we would have in joining the Union.

Q. Did anyone else speak besides Mr. Rosqvist?

A. I think Mr. Webb spoke. [156]

Q. Who was Mr. Webb?

A. He was treasurer of the company at that time.

Q. (Trial Examiner Riemer): Is that Arch Webb?

Q. (Mr. Penfield, continuing): Arch Webb, is that correct? A. Yes.

Well, he told us that he wouldn't advise us to join the union, or not to join it. He just left it up to us, whether we wanted the union or whether we didn't.

(Testimony of John Anderson.)

Trial Examiner Riemer: Will you read the witness' answer, Mr. Reporter?

(Thereupon the answer referred to was read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record. The hearing will recess at this time until tomorrow morning, Tuesday morning, at 9:30. Mr. Anderson, will you return here tomorrow morning at 9:30?

The Witness: Yes.

(Whereupon, at 4:30 p. m. August 3, 1942, the hearing was adjourned to 9:30 a. m. August 4, 1942, at the same place.) [157]

District Court Room
Post Office Building,
Pocatello, Idaho,
Tuesday, August 4, 1942

The above-entitled matter resumed for hearing at 9:30 a. m. pursuant to adjournment, as follows: [158]

PROCEEDINGS

Trial Examiner Riemer: The hearing will be in order. Mr. Anderson, will you please come up here?

JOHN ANDERSON

the witness on the stand at the time of adjournment, resumed and further testified as follows:

Direct Examination (continued)

(Last question and answer from preceding session were read aloud by the reporter as hereinbefore recorded.)

Q. (Mr. Penfield, continuing): What else did Mr. Webb say?

A. Well, he said that he didn't think that a Union would do anything for us that the company wouldn't do.

Q. Was there any balloting at this meeting?

A. Yes.

Q. Who suggested it?

A. Well, I don't know; we just voted to see whether we wanted to join the Union or not. I forget who suggested it.

Q. You don't recall who suggested it?

A. No, I don't.

Q. Was Mr. Rosqvist present during the balloting? A. I don't think so.

Q. Was Mr. Webb? A. No.

Q. Do you recall the exact results of this vote?

A. I think there were two votes for the Union, and the rest [162] against.

Trial Examiner Riemer: How many would that be against?

The Witness: Well, I imagine that it would be 35 or 40 against to 2 for.

(Testimony of John Anderson.)

Q. (Mr. Penfield, continuing): Do you know the exact date of this meeting?

A. No, I don't. I think that it was in the spring of 1939, is as near as I can recall it.

Q. What month?

A. I wouldn't answer.

Q. To the best of your recollection?

A. Well, I would say March.

Q. Do you recall any discussion in regard to forming a labor organization at a subsequent date?

A. You mean change the name of our Association to a labor association?

Q. No, I have in mind an outside labor organization. A. No.

Q. In the fall of 1941, did you hear that the truck drivers were organizing?

A. Yes, I heard that they were organizing.

Q. Who told you?

A. Well, just through the plant, I think that practically everyone in the refinery knew it.

Q. Was it commonly discussed among the employees? [163]

A. Yes, we talked about it on the shift out there, about drivers joining.

Q. How much before November 14 did this occur?

A. Well, I suppose we knew it a month ahead of that.

Q. You testified yesterday about a meeting at which the question of forming an organization of the employees was first discussed—

(Testimony of John Anderson.)

A. Yes.

Q. What was the date of that meeting?

A. Well, it was in the fall or early winter of 1938.

Q. To the best that you can recall, in what month?

A. Well, I would say about November.

Q. When had the plant commenced operation?

A. We just started up out there in June of 1938.

Q. And this first meeting you believe was in November?

A. October—I don't remember. It was in the fall or early winter of 1938.

Q. You testified that there was a later meeting at which by-laws were adopted and officers elected, is that correct? A. Right.

Q. Do you recall when this meeting occurred in relation to the first meeting?

A. Well, I would say about a month later.

Q. About a month later. That is all.

Trial Examiner Riemer: Mr. Moyle? [164]

Cross Examination

Q. (Mr. Moyle): You talk about the drivers organizing, and you said that you heard about it a month before November 14? A. Yes, sir.

Q. You didn't tell any officer of the company that you knew anything about it?

A. No, sir.

Q. And you didn't hear the matter discussed with any officer? A. No, sir.

(Testimony of John Anderson.)

Q. And so far as you know, no officer of the company knew anything about it?

A. That's right.

Q. The discussions that you testified to were those that you had with the employees there?

A. With the employees on shift out there, throughout the plant, that the drivers were joining.

Q. Did you know which of the drivers had joined or had not joined?

A. Well, I talked with various drivers over in the change room, or something like that, who would tell me that they had joined.

Q. These drivers met with you in the change room every day?

A. Well, not every day. I might go a week without seeing them.

Q. You mean that there might not be one in the change room when you changed? [165]

A. No, sir. I might go for a drink of water, and a driver there would come in.

Q. When the drivers are in, they make the change room their headquarters?

A. No, they will come over while their truck is being loaded.

Q. Yes, they make that their lounging and recreational headquarters?

A. While their truck is being loaded or unloaded.

Q. Yes, and that is the same with the other workmen in the plant?

A. Yes.

(Testimony of John Anderson.)

Trial Examiner Riemer: Will you take your hand away from your mouth, please, and we can hear you better. Thank you.

Q. (Mr. Moyle, continuing: Now, the truck drivers helped to build this recreation center?

A. Yes, some of them worked on it.

Q. That is where you hold your meetings?

A. Yes, sir.

Q. You recall do you not the fact that the employees wanted a new change room?

A. Yes, sir.

Q. And they made that fact known to the company? A. Yes, sir.

Q. And suggested to the company that if the company would furnish the materials, the workmen would build the building? [166]

A. Yes, sir.

Q. And the company furnished the materials?

A. Yes, sir.

Q. And the workmen in the refinery, including the truck drivers, helped to build it?

A. Yes, sir.

Q. And that work was done outside of company time? A. Yes, sir.

Q. Off shift? A. Yes, sir.

Q. And that arrangements was carried out with the company by the officers of the corporation?

A. Yes, sir.

Q. Do you remember just when the original negotiations were undertaken to build this meeting hall and change room?

(Testimony of John Anderson.)

A. No, sir, I don't. I imagine—well, it was a year and a half or so after we started up.

Q. That would be somewhere in the early summer of 1939?

A. 1939, yes, sir; I think so.

Q. Or was it in the wintertime?

A. Well, we started in the fall and didn't get it completed until last spring.

Q. That would be the fall of 1939 and you finished it in the spring of 1940?

A. 1940, yes, sir.

Q. And since that was finished, that is where you held your [167] meetings? A. Yes.

Q. And the idea with reference to the building of this building originated with the Employees Association there at the Refinery? A. Yes, sir.

Q. This building consists of a fairly large meeting room, how large would you say that room is?

A. Well, I would say it is about 24x16, or something like that.

Q. Is it large enough to accommodate the employees in their employees' meetings?

A. Yes, sir; that is the one room.

Q. And then in addition to that, there is a locker room? A. Yes.

Q. And shower baths? A. Yes, sir.

Q. And then a room near the front door for the sale of merchandise? A. Yes, sir.

Q. Now, since the construction of this building, the employees have had the exclusive use of it?

A. Yes, sir.

(Testimony of John Anderson.)

Q. At the time that Mr. Webb was present at your meeting in the spring of 1939, you think in the month of March, at which he introduced Mr. Rosqvist, Mr. Webb left immediately after he had introduced Mr. Rosqvist,—Mr. Webb left immediately, [168] did he not?

A. I believe he left. I believe Mr. Rosqvist had the floor to himself without Mr. Webb.

Q. Without Mr. Webb. In other words, Mr. Webb introduced him, and then left the meeting, and Mr. Rosqvist from then on had the floor?

A. I think so.

Q. And Mr. Webb told you that the meeting had been called at the request of Mr. Rosqvist?

A. Well, I have been under the impression that the company officials gave Mr. Rosqvist permission to come and speak to us.

Q. That is, he had asked for that permission?

A. I think so.

Q. And he had also asked that a vote at that time be taken? A. Yes, sir.

Q. And when Mr. Rosqvist spoke to you and before he left, before you took the vote, it was suggested by him that there should be a vote taken?

A. Yes, sir.

Q. As to whether you joined the union Mr. Rosqvist represented or whether you made some other arrangement? A. Yes, sir.

Trial Examiner Riemer: You say "him", is that Rosqvist or Webb?

(Testimony of John Anderson.)

Mr. Moyle: I am speaking now of Mr. Rosqvist? [169] That is after Mr. Webb left.

Q. (Mr. Moyle, continuing): Is that not correct? A. Yes.

Trial Examiner Riemer: Then it was Rosqvist who suggested the vote?

Mr. Moyle: Yes, that is correct, isn't it?

A. (Continuing): Well, I don't know whether Rosqvist suggested the vote or not, but it was suggested at the meeting that we vote.

Q. (Mr. Moyle, continuing): That is after Mr. Rosqvist had the floor and Mr. Webb had left?

A. Yes, sir.

Q. There may have been as many as 60 at that meeting—you said 35 or 40—you didn't count them?

A. No, sir; I didn't.

Q. There may have been more than 40?

A. Well, it is doubtful, because they had a number of men on shift.

Q. You think that 40 would be the outside number?

A. I think that 40 would have covered it.

Q. Now, at that time, George Mann was president of this Association? A. Yes, sir.

Q. And he is not now with the refinery?

A. No, sir. [170]

Q. He left the employment of the refinery shortly after that, did he not? A. Yes, sir.

Q. Now, do you know Mr. Henninger?

A. Yes, sir.

(Testimony of John Anderson.)

Q. He has been an employee of the refinery pretty much for the same tenure as you?

A. Yes.

Q. Did he come there at the same time, or after?

A. Well, just about the same time.

Q. And he has worked at various jobs around the refinery?

A. Yes, sir.

Q. He has served in the treater room?

A. Yes.

Q. Then he has worked at other jobs around the unit?

A. No, sir; he has never been on the unit.

Q. Well, I mean on the yard. I don't speak of the unit technically as you would, but he has had different jobs as supervisor of the refinery proper?

A. To the best of my knowledge he has been on the treating plant and loading dock, and that is all.

Q. And has been under the supervision of the refinery superintendent?

A. Yes, sir.

Q. Now, you testified yesterday concerning a committee that [171] was formed consisting of Del Peters, Max Pope, K. Mills and yourself?

A. Yes, sir.

Q. You said that was in the spring of 1941, as nearly as you remember it, in the month of May?

A. Yes, sir.

Q. You didn't know what day in the month that was?

A. No, sir; I wouldn't know.

Q. The purpose of this committee was to get a wage increase?

A. That is right.

(Testimony of John Anderson.)

Q. And at that time, Del Peters was president of the company Association, or the inside Association?
A. That's right.

Q. Was Max Pope, or Kay Mills, either one of them, an officer of the Association at that time?

A. I don't believe so.

Q. And you were on the grievance committee?

A. Not at that time, no, sir.

Q. But you had been?

A. I had been.

Q. Your committee saw Mr. Moyle?

A. Yes, sir.

Q. And as the result of that, there was a general meeting of the employees that was held?

A. Yes, sir. [172]

Q. But in the general meeting, there was an agreement presented was there not?

A. Yes, sir. [174]

Q. And that was signed by Delmar R. Peters, the President?

A. I knew Del signed the agreement.

Q. And attested by Earl B. Porter, the secretary?
A. He was secretary.

Q. Did you vote for both of these gentlemen as officers of the Association?

A. I think so.

Q. They were duly elected as such at a meeting called for that purpose?
A. Yes.

Q. And that the agreement was then executed as prepared by your Association's attorney and

(Testimony of John Anderson.)

signed by Gilbert Sheets, President, and F. L. Copenig, Jr., Secretary?

A. I knew that they presented an agreement and it was signed by the President and Secretary.

Q. And you understood that that agreement had to do with the wages of the employees? [175]

A. For one year, yes, sir.

Q. And that year was from June 1, 1941 to May 31, 1942? A. 1942. [176]

Q. Do you recall on March 8, 1941, a petition was circulated among the employees by the Association empowering the Board of Directors of your organization to call a special meeting for the purpose of making provisions in the by-laws and constitution for athletic funds to be supported by a third of the profits on the sale of the commodities you sold?

A. Well, I know a certain percentage of our profits used to go to that athletic fund. I think that it has been discontinued.

Q. Do you remember the petition?

A. Yes, sir.

Q. Did you sign it?

A. Yes, sir; I signed a "no" to it.

Q. And did anybody else sign "No" to it?

A. I think so. We had quite an argument down there about [179] contributing to the athletic fund. The biggest part of us didn't want to. I think that it was left to the petition to see whether or not we would give to the athletic fund, and I don't believe that we gave to it.

(Testimony of John Anderson.)

Q. Well, you were not present at the meeting in which the decision was finally made?

A. No, sir.

Q. By the Association? A. No, sir.

Q. Didn't you know after that meeting was held, that at that meeting there were three committees appointed, a grievance committee, a welfare committee, and a safety committee?

A. Yes, sir; a matter of every six months we hold those officers' meetings.

Q. You had those three committees?

A. Yes.

Q. They were standing committees in your organization? A. Yes, sir.

Q. And at that time, these committees were just perpetuated that had already been in existence?

A. Yes, sir.

Q. As a matter of fact, pretty much from the beginning of your organization up to the present time, you have had these three standing committees? [180]

A. Yes, sir.

Q. A welfare committee, as safety committee, and a grievance committee? A. That's right.

Q. And on that grievance committee, at a meeting of 1940—

Trial Examiner Riemer: What is the date of that meeting?

Mr. Moyle: The meeting of August 30, 1940.

Q. (Mr. Moyle, continuing): August 30, 1940, there was a truck driver appointed on the grievance committee?

(Testimony of John Anderson.)

A. Yes, we had the driver on the grievance committee.

Q. Now, as a matter of fact, you readily concede there were a great many things that the officers of the Association did that were not called to your attention?

A. Well, there were several things that were not called to my attention.

Q. And when you stated yesterday that there had never been any separate, personal, grievances taken up by the Association with the management, you simply meant so far as you knew?

A. Yes, sir.

Q. Now, as a matter of fact, there could have been personal grievances taken up with the Association that you know nothing about?

A. Yes, sir; because I was only on one grievance committee.

Q. What you intended to say yesterday was, that so long as you were on that grievance committee, your grievance committee [181] had no personal grievances to take up with the management?

A. That's right.

Q. And as far as you know, during that period of time, when you served on the grievance committee, there were no personal grievances that were brought up before the committee?

A. That's right.

Q. For the committee to consider?

A. That's right.

(Testimony of John Anderson.)

Q. So then the fact is that there was nothing for your committee to do while you were on it?

A. That's right.

Q. What other committees have done, you don't want to say?

A. I don't know what they have done.

Q. You don't know what they have done. You stated that at the time Mr. Hibbler attended your first meeting in the fall of 1938, in November,—you think it was October or November—that he was the chief chemist?

A. Yes, sir.

Q. You used the word "chief"?

A. Yes.

Q. He was the only chemist?

A. He was the only chemist.

Q. He was the only chemist the company had?

A. Yes, sir.

Q. At that time, they had just a small laboratory? [182]

A. Yes, one room and an office adjoining it.

Q. And Mr. Hibbler was the only chemist?

A. That's right.

Q. He had no assistants of any kind?

A. No assistants whatever.

Q. So far as you know, he was just an employee of the company?

A. Yes, sir.

Q. With no supervisory powers at all?

A. None at all.

Q. And it was Mr. Hibbler whom you say said nothing about—at that first meeting—about bargaining for wages and hours?

A. That's right.

(Testimony of John Anderson.)

Q. But he did tell you about the kind of an organization that they had had at the Skelly Oil Company? A. Yes, sir.

Q. Did he tell you where he had previously worked? A. In Kansas.

Q. At the Skelly Oil Plant in Kansas?

A. Yes.

Q. And he had been a chemist at that plant?

A. Yes, sir.

Q. And he told you at that time of his experiences with that organization?

A. Yes, sir.

Q. Now, George Mann, you said had something to say at that [183] meeting? A. Yes, sir.

Q. That he likewise was an employee of the unit?

A. Yes, sir.

Q. Either an operator or a helper?

A. Yes, sir.

Q. As a matter of fact, he was a helper at that time, was he not? A. Yes, sir.

Q. These two men spoke on the subject of an organization, and George Mann was elected its first president? A. Yes, sir.

Q. Did he continue to be president as long as he stayed at the refinery? A. I think so.

Q. So far as you know, has there been at any time since the refinery began its operations, any officer of the refinery so far as you know that attempted directly or indirectly to influence you at all in what you did? A. No, sir——

(Testimony of John Anderson.)

Mr. Penfield: I object, as that calls for a conclusion of the witness.

Trial Examiner Riemer: Overruled.

A. (Continuing): I don't think that the company ever influenced the Association whatsoever in any way. [184]

Q. You have never been conscious of any such an influence? A. No.

Q. And so far as you know, at this first meeting that was held in the fall of 1938, the employees did exactly as they pleased?

A. They did,—we did. We had an open ballot on it.

Q. And I think that you said the balloting was unanimous? A. Yes, sir.

Q. At that meeting, there were forty or fifty people?

A. I would say in the neighborhood of that.

Q. And that would represent all of the employees except those that were actually on duty—or was the unit down at that time?

A. No, sir; it was running.

Q. And those people at the meeting represented all of the employees except the men working on the unit? A. Yes, sir.

Q. How many men work on the unit?

A. Eight.

Q. Eight men? A. Yes.

Q. So that, so far as you know, all of the employees except eight were present?

A. That is eight, that is the three shifts,—for

(Testimony of John Anderson.)

the four shifts,—that would be about four men who could not be there, one in the boiler house, two in the treater—one on the [185] treater——

Q. As far as you now recollect they were all there except four? A. Yes, sir. [186]

Q. You have understood after the first year that you were with the company, that because of the difficulties that the company had in operating the plant over a longer period of time, [187] and changes have had to be made in the original design, that the company was having very great difficulty in surviving? A. I have.

Trial Examiner Riemer: What is the purpose of this, Mr. Moyle?

Mr. Moyle: I think that it is material to show what kind of a company it was, and we will attempt to show, that before we get through, this company is not a company that could have influenced its employees.

Mr. Penfield: I can't see what that sort of testimony would prove.

Mr. Moyle: In other words, you can get a company to the point of financially where it is dependent on its employees, rather than to coerce them.

Mr. Penfield: I don't think so——

Mr. Moyle: Whether you think so or not, we are going to offer in this case, proof of the fact that it has been a question of whether the company folded up entirely, or getting the cooperation of this Association——

Trial Examiner Riemer: It is pretty conjectural. I think that I will sustain the objection at this

(Testimony of John Anderson.)

time to the introduction of any such testimony through this witness. When you get into your own case in chief, and propose to follow that line of questioning, I will consider it again.

Mr. Moyle: I think that is all. [188]

Trial Examiner Riemer: Mr. Penfield? Before you proceed, is the Association represented by any attorney or representative?

Mr. Moyle: The Association was not made a party. That is something that we could not understand. That is something that we could not understand, because the Association was never made a party. That is one difficulty. I have been wondering how we could adjudicate anything against this Association without the Association being made a party.

Trial Examiner Riemer: The Association is a party.

Mr. Penfield: They were served with notification——

Trial Examiner Riemer: Board's Exhibit 1-C shows that Delmar Peters was president of the Association, and was served with an order postponing the hearing. We have a return receipt signed by—it looks by B. J. Albertson—on behalf of the Idaho Refining Company Labor & Benefit Association. The same man evidently signed for the respondent, too.

On the 24th of June, the same Peters was served with a copy of the consolidated complaint, con-

(Testimony of John Anderson.)

solidated notice of hearing, amended charge, and charge. There is a return receipt for the same on behalf of the Association, signed by B. J. Albertson, dated June 26th. I take it, under the Consolidated Gas Case, in the Supreme Court, that the Association is properly before us at this time.

I am just thinking, Mr. Penfield, whether you, as the Board's Attorney here, want to notify the Association again by [189] telephone that this hearing is going on, and that they have a right to be represented, either by attorney or otherwise.

Mr. Penfield: The president is in the courtroom under subpoena at the present time.

Trial Examiner Riemer: What is the president's name?

Mr. Penfield: Mr. Peters.

Trial Examiner Riemer: Mr. Peters, are you present?

Mr. Peters: Yes.

Trial Examiner Riemer: Do you wish now to note your appearance for the record, on behalf of the Association? Will you please state your name and address?

Mr. Peters: Delmar Peters, 720 East Oak, Pocatello.

Trial Examiner Riemer: You may come up, if you wish.

Mr. Moyle: Would you mind giving him the advice that they are entitled to be represented by counsel?

(Testimony of John Anderson.)

Trial Examiner Riemer: Yes I will state it again, you are entitled to be represented by counsel, and that you may sit up here and participate in the hearing, and question witnesses, or produce your own.

Mr. Peters: I didn't understand that our Association was a party on this. We received the complaint. I never understood it, and that is the reason that we didn't have anyone to represent our Association.

Mr. Penfield: I believe that we sent a copy of the rules and regulations with the complaint, Mr. Examiner, and it was [190] our position that we didn't consider it necessary to do anything further.

Mr. Moyle: I am sure I didn't that/out of the rules and regulations, so Mr. Peters may be excused for not doing so.

You may come up and sit at the counsel table, and examine and cross examine witnesses. You haven't been prejudiced, because Mr. Anderson is the first witness who has testified at all concerning the Association. Is that correct?

Mr. Penfield: That is correct.

(Mr. Delmar Peters takes his place at the counsel table.)

Trial Examiner Riemer: Mr. Peters, you have the right to examine witnesses if you wish. I might state further, in advice to you, that your participation in the hearing so far as the examination of witnesses is concerned, is restricted or

(Testimony of John Anderson.)

confined solely to the issues pertaining to the Association. You may proceed, if you wish to examine the witnesses on anything and everything that concerns the Association.

Mr. Peters: Well, I don't feel capable of doing that.

Trial Examiner Riemer: It is very simple, and if you want to, you may, and you can consider in the meantime if you wish, the desirability of getting counsel to represent you, but it is not necessary at all. You can see from the nature of the hearing, so far as the questions that are asked, they are quite simple, and no particular genius is necessary in examining [191] the witnesses.

Mr. Moyle: I was just wondering if Mr. Peters was here during the direct examination yesterday?

Mr. Peters: I was here part of the time yesterday.

Mr. Moyle: Did you hear Mr. Anderson?

Mr. Peters: No.

Trial Examiner Riemer: Proceed, Mr. Penfield.

Redirect Examination

Q. (Mr. Penfield, continuing): Mr. Anderson, with respect to this meeting that you testified occurred about October, 1938, at which the formation of an employees' organization was discussed, did I understand you to say that all of the employees including the officers and supervisors were present?

A. I think that the biggest part of the office force was there.

(Testimony of John Anderson.)

Q. Did they vote and become members?

A. Yes.

Mr. Moyle: So there will be no understanding, you used the word "officers" and the witness used the word "office force."

The Witness: I said "office force". I don't mean Mr. Moyle. He wasn't there.

Q. (Mr. Penfield, continuing): Was Mr. Copen-
ing there?

A. No, Mr. Copening wasn't there.

Q. Was Mr. Webb there? [192]

A. Mr. Webb was there.

Q. Mr. Webb was the——

A. Treasurer.

Q. He was an officer, was he not?

A. I don't know the officers of the company. All I know is that he was treasurer.

Q. Was Mr. Moyle there?

A. I don't think so.

Q. Was Kermit Rice there?

A. Kermit Rice was there——

Trial Examiner Riemer: What was Kermit Rice at that time?

The Witness: He was a truck dispatcher or something.

Q. (Mr. Penfield, continuing): Who was the superintendent at that time? A. Caudet.

Q. Was he there? A. I think so.

Q. Did he become a member?

A. I don't know; I don't know whether he was

(Testimony of John Anderson.)

a member or not. He didn't say there long enough to join up, even if he had wanted to, that night.

Q. Isn't it a fact that officers of the corporation and supervisors became members and are members?

Mr. Moyle: I object to that as calling for a conclusion of the witness. [193]

Trial Examiner Riemer: If the witness knows, he may answer.

A. Well, I think—I know that Henninger belongs; Kermit Rice belongs, and Simpson belongs.

Q. Who is Spike Henninger?

A. Spike Henninger is over the loading dock. At that time, he was on the treating plant.

Q. What does he do now?

A. He is on the loading dock.

Q. Is he a member? A. Yes.

Q. You mentioned a man by the name of Simpson. A. Vic Simpson is yard foreman.

Q. At the present time? A. Yes.

Q. Was he yard foreman in 1938?

A. Yes.

Q. Who is superintendent of the plant at the present time? A. E. V. Smith.

Q. Is he a member?

A. I suppose he is.

Q. Do you know?

A. Yes, I know that he is a member.

Q. Was he at that meeting in October of 1938?

A. I don't know whether he was at the meeting or not.

(Testimony of John Anderson.)

Q. What was his position at that time? [194]

A. He was an operator.

Q. Did he later become assistant superintendent?
A. Yes.

Q. You testified that the employees assisted in the building of a change room where the meetings are held at the present time?

A. Yes, that's right.

Q. When was it that this building was built?

A. Well, I think that the building was started in 1939, the fall or early winter.

Q. Did you attend a meeting of the Association at which the putting up of the building was discussed?

A. Well, I think that we had a meeting of the Association and elected a grievance committee to go to Mr. Moyle and see if we could not get a new change building.

Q. When was that meeting?

A. Well, it was in 1939.

Q. What part of 1939?

A. Well, I would say the fall.

Q. The late fall? A. The late fall.

Q. October?

A. I would say about September or October, somewhere along there.

Q. Were you a member of the committee? [195]

A. No.

Q. Did you attend any later meetings of the Association at which the committee reported on those meetings with the company?

(Testimony of John Anderson.)

A. Yes, I think that the Association appointed a committee to go to Mr. Moyle and talk to him and agreed to furnish the labor if the company would furnish the materials.

Q. Did you hear this at a later meeting of the Association?

A. The Company agreed to furnish the material if we furnished the labor.

Q. How much later was this meeting?

A. We had a meeting every month at that time.

Q. Was it at the regular monthly meeting?

A. Yes.

Q. You were informed that the company would furnish the material?

A. The company would furnish the material.

Q. Did you assist in putting up this building?

A. Yes, I helped.

Q. Were you compensated for that?

A. No.

Q. That was built on company property?

A. Yes, sir.

Q. Did the company furnish all the material?

A. The company furnished all the material.

Q. Has that been used for a meeting place for the Association [196] ever since?

A. Meeting place, change room shower room.

[197]

Recross Examination

Q. You were asked about Mr. Henninger. Now, at the time that [206] this meeting was held in Oc-

(Testimony of John Anderson.)

tober or November, 1938, Mr. Henninger was just an employee? A. Yes.

Q. Working in the treating plant?

A. Yes.

Q. And Mr. Smith was just an employee working on the unit? A. He was an operator.

Q. And Mr. Simpson was just an employee working in the yard?

A. No, sir; he was yard foreman at that time.

Q. Are you sure of that? A. That's right.

Q. But he worked under the superintendent of the plant direct? A. Yes, sir.

Q. And Kermit Rice, at that time, you say he was a dispatcher? A. Truck dispatcher.

Q. How many trucks did the company have in October, 1938?

A. They didn't have a great deal.

Q. They only had one, didn't they?

A. I don't remember how many they had.

Q. And Kermit Rice was the driver?

A. I don't think so.

Q. You don't think that Kermit Rice was driving in 1938?

A. I don't recall him ever driving.

Q. Do you recall where the refinery got its first truck?

A. No, I remember it was an old Studebaker.

[207]

Q. And they got it from the United Company?

A. I don't remember. When I came up to work, they had three or four old trucks.

Q. But there was only one truck hauling pe-

(Testimony of John Anderson.)

troleum products at that time, and that was the old Studebaker?

A. Well, I didn't come until August, and in August there was more than one truck.

Q. But Kermit Rice at that time was one of the drivers?

A. I don't think so—not since I have known him.

Mr. Moyles: That is all.

Redirect Examination

Q. (Mr. Penfield) At this meeting at which Mr. Rosqvist spoke, who was the plant manager at that time?

A. Val Gaudet, he was superintendent; M. B. Kaye was assistant manager.

Q. At the time of this meeting in the spring of 1939 when Rosqvist spoke? A. Oh, no.

Q. Or the first meeting?

A. Well, I suppose D. F. Gurtzenberg.

Q. Do you mean general manager or plant superintendent? A. He was general manager.

Q. The same position that Mr. Moyle holds at the present time?

A. No, he was manager over the refinery here and the one at Spokane. [208]

Q. Was he present at that meeting?

A. No.

Q. Who was the plant superintendent.

A. Glenn Kinnich, at that time.

Q. Was he present at that meeting?

A. No.

(Testimony of John Anderson.)

Q. Was Kermit Rice present at that meeting?

A. I think so. [209]

Mr. Penfield: Mr. Moyle, with respect to this list of officers and directors of the Idaho Gas & Oil Company, this is the list that you prepared for us, is it?

Mr. Moyle: Yes, that is right.

Mr. Penfield: That Mr. Gilbert Moyle was unable to furnish yesterday. I think probably that it would be well to offer this; if the company will stipulate that this is a correct list, we will offer this in evidence.

Mr. Moyle: No objection.

Trial Examiner Riemer: It is admitted, and marked in evidence as Board's Exhibit 7.

(Whereupon the document hereinabove referred to was marked and received in evidence as Board's Exhibit 7.)

BOARD'S EXHIBIT No. 7

Officers and Directors—Idaho Gas & Oil Co.

Original Officers:

H. W. Henderson, President

Henry D. Moyle, Vice-President

John H. Peterson, Secretary-Treasurer

Directors:—Same

Later:

John H. Peterson, President

Henry D. Moyle, Vice-President

Arch Webb, Secretary-Treasurer

Directors:—Same

(Testimony of John Anderson.)

Later:

John H. Peterson, President

Henry D. Moyle, Vice-President

Frank Copening, Secretary-Treasurer

Directors:—Same

Now:

B. J. Albertson, President

Henry D. Moyle, Vice-President

William McMillan, Secretary-Treasurer

Directors:—Same

Mr. Penfield: I will call Mr. Duncan.

HASKELL DUNCAN

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please?

The Witness: Haskell Duncan.

Trial Examiner Riemer: Where do you live?

The Witness: 1508 East Center Building.

Direct Examination [211]

Q. (Mr. Penfield): Where are you employed at the present time?

A. The Idaho Refining Company.

Q. In what capacity?

(Testimony of Haskell Duncan.)

A. Stillman, or operator.

Q. When did you first go to work for the company?

A. September 16, 1938.

Q. Were you employed in the same capacity at that time?

A. Yes, sir.

Q. And you have been doing the same job ever since?

A. With the exception of about a year; I served as night supervisor for about a year.

Q. Night supervisor? A. Yes.

Q. What were your duties as night supervisor?

A. Largely to oversee some inexperienced operators.

Q. What year was that, Mr. Duncan?

A. Oh, it was in 1940, continuing over into March, 1941.

Q. From March 1940 to March, 1941?

A. No, it started, I believe, in possibly June in 1940. It wasn't quite a year.

Q. Did you have complete charge of the plant during the nights?

A. That was my understanding.

Q. What was your compensation?

A. \$200 a month.

Q. Were you paid on a salary as a stillman?

[212]

A. Paid by the hour.

Q. During the time that you were night supervisor, you were paid on a salary?

(Testimony of Haskell Duncan.)

A. Flat salary.

Q. Did you hire the employees?

A. I had nothing to do with hiring them.

Q. Could you discharge an employee who was unsatisfactory?

A. I might have brought some pressure to bear in that direction. I don't know, I never tried.

Q. You did direct them in the work?

A. Largely oversee them, and keep the inexperienced people out of trouble.

Q. Are you a member of the Idaho Refinery Company Employees Benefit & Labor Association?

A. I am.

Q. When did you first join this Association?

A. Any date I would give would be a guess. Sometime in the spring of 1939.

Q. And you testified that you came to work at what time? A. In September, 1938.

Q. It was some months after you came to work?

A. Yes, sir.

Q. Would you say March or April, or earlier or later?

A. Well, as I say, that would be a guess. It was in the spring—early spring possibly [213]

Q. Have you ever held an office in the Association? A. Yes, sir.

Q. What office?

A. I was on the grievance committee one term, and president one term.

(Testimony of Haskell Duncan.)

Q. What was the term that you were president?

A. I believe that it was the latter part of 1939.

Q. What dates in 1939?

A. Well, the exact dates escape me—say the last half of the year, or something to that effect.

Q. From June to December?

A. At that time, were elected every six months.

Q. From June to December?

A. That would be roughly it. It is not exact.

Q. When were you on the grievance committee?

A. I believe that I was elected on the grievance committee or appointed, I don't remember which, shortly after I joined the Association.

Q. How long did you continue to serve on the grievance committee?

A. Just a few months, three or four.

Q. Did you take up any grievances with the management?

A. No, none came to our attention.

Q. None whatever?

A. Not during that period, no. [214]

Q. Are those the only committees that you served on?

A. I have been on the safety committee at least two terms. I am chairman of it.

Q. When are the last two terms?

A. I am at present a member of the safety committee.

Q. And you were elected at what time?

Mr. Peters: January.

(Testimony of Haskell Duncan.)

A. I imagine that is correct.

Q. (Trial Examiner Reimer) What year?

A. This year.

Q. (Mr. Penfield, continuing): Is that term for a year's period?

A. I believe it is, yes.

Q. Did you serve the preceding year on the safety committee?

A. I think that we did, six month terms that year, didn't we?

Well, it was continuing from the previous term.

Q. You served about a year and a half on the safety committee?

A. That would be approximately correct.

Q. Were you on the safety committee during the period that you were night supervisor?

A. I believe so. [215]

Q. Where do you purchase the gasoline? [217]

A. At the Covey station on Fifth and Oak, I believe. I don't know the streets too well.

Q. Is that the only place that you can receive such discount?

A. Yes, on purchases, or on a charge basis, handled on a payroll deduction plan at that station.

Q. Will you explain to us how that works in case you go in for a purchase of gasoline?

A. I sign a ticket for what I purchase. It is run through the Covey office, and I presume that they handle the discounts.

Q. Is that amount deducted from your wages, or salary?

A. Yes.

(Testimony of Haskell Duncan.)

Q. How often are these deductions made?

A. Every two weeks, I believe—every pay day.

Q. Is this discount on gasoline and accessories limited to members of the Association?

A. I understand not at present, no.

Q. Was it ever limited to members of the Association?

A. I believe that it was in the beginning, yes,—the beginning of the discount.

Q. When did you first hear anything about a discount on purchases?

A. You mean the exact date?

Q. Yes, as best you can recall it.

A. Well, that was in the early spring of 1939, to the best of my memory.

Q. Was that after you joined the Association?

[218]

A. Just before.

Q. What did you hear?

A. Well, a meeting was called of the employees one morning in the office. I was going off shift, so I stopped in at the meeting.

Q. Can you recall just about when that meeting was?

A. I imagine that it was in the spring of 1939, as I remember.

Q. The early spring, March or April?

A. I couldn't give the month.

Q. It was before you joined the Association?

A. Yes.

(Testimony of Haskell Duncan.)

Q. Was this a meeting of the Association?

A. I don't know whether it was limited to the Association members or not.

Q. Where was this meeting held?

A. In the north steps of the office.

Q. Who was presiding at this meeting?

A. Well, I don't know whether they had a formal presiding officer or not.

Q. Who addressed the meeting?

A. Mr. Moyle.

Q. Mr. H. D. Moyle? A. Yes.

Trial Examiner Riemer: H. D. or Gilbert Moyle

The Witness: Mr. Henry D. Moyle. [219]

Q. (Mr. Penfield, continuing) That is the vice-president of the company?

A. I have been told that that is his title. I don't know much about the official business.

Q. What did he say?

A. Well, Mr. Moyle talked to us about a plan to help establish housing quarters on some land opposite the refinery, and also suggested that he would give us a discount on products, for which we were very grateful.

Q. Did he say who was to get this discount?

A. It runs in my mind that it was members of the Association.

Q. Did you subsequently join the Association?

A. Yes, I joined shortly after that.

Q. Did the question of discounts have any effect on your decision to join?

(Testimony of Haskell Duncan.)

Mr. Moyle: I object to that on the grounds that it calls for a conclusion.

Mr. Penfield: I think that he knows that.

Trial Examiner Reimer: We have been permitting witnesses to state conclusions. The objection is overruled.

A. I expect it did. I was buying gas before I came to Pocatello at 12 cents a gallon, and it was 25 cents here, and that kind of hurt.

Q. How much reduction did you get per gallon?

A. I believe about 7 cents.

Q. Are you still getting that reduction? [220]

A. That I don't know. We are getting a reduction, but I don't know what the retail price is.

Q. Did I understand you to testify the deductions are not at the present time limited to members of the Association?

A. I have been told that. I don't know much about that end of the business.

Q. Do you have any knowledge as to when the change took place?

A. No, I don't.

Q. You don't know for sure then that the change has taken place?

A. No, I don't know that for sure, other than hearsay.

Q. Was it ever announced at any meeting of the Association?

A. Not that I heard.

Q. Are you a member of the Board of Directors?

A. Yes, sir.

(Testimony of Haskell Duncan.)

Q. How long have you been a member of the Board of Directors of the Association?

A. I believe since we changed to have the Board of Directors handle the business.

Q. How does it happen that you are a member of the Board of Directors?

A. As chairman of the committee on which I serve.

Q. Are chairmen of all committees members of the Board of Directors?

A. Yes, sir. [221]

Q. You have been a member for about a year and a half, then?

A. Of the Board of Directors?

Q. Yes. A. Yes, I believe so.

Q. Do you regularly attend the meetings of the Board?

A. Not too regularly. I have been building a house which takes up most of my spare time.

Q. Do you recall any meeting of the Board at which was taken up the question of extending the discount to persons other than members of the Association?

A. I don't recall hearing that, no. I doubt if the Association would determine that, anyway.

Q. What is the correct name of this labor organization of the Idaho Refining Employees at the present time?

A. I don't know that I can quote it verbatim or

(Testimony of Haskell Duncan.)

not. Something like Idaho Refining Employees Benefit & Labor Association.

Q. Did that organization ever have any different name?

A. The word "Labor" was added to it at one time.

Q. Do you recall what the name of it was prior to that?

A. It would be just the same thing without the word "Labor."

Q. The Idaho Refining Company Employees Benefit Association?

A. I believe Mutual Benefit Association.

Q. When was that name changed?

A. Well, my memory is pretty hazy on that. I would say the [222] latter part of '39, but possibly the early part of 1940.

Q. Are you acquainted with the circumstances that led up to the change of the name?

A. Well, the only thing that I know of is that that was brought up at one of the regular monthly meetings.

Q. A meeting of the membership?

A. Yes, sir.

Q. Who brought it up?

A. Mr. Henninger, I believe.

Q. Who was Mr. Henninger?

A. He is the foreman of the loading dock—I think then he was still on the treating plant, I wouldn't be sure of that.

Q. When was that?

(Testimony of Haskell Duncan.)

A. I gave you about a six months' leeway—I don't know.

Q. How close could you put it?

A. It is difficult to remember. It has been some time.

Q. Was Mr. Henninger at or on the loading dock at that time?

A. I believe that he was still in the treating plant, but I am not certain.

Q. Was any reason advanced for changing the name?

A. His argument was that it would comply with the National Labor Relations Law by making it a bona fide labor association.

Q. Was anything said about changing the functions of the organization at that time?

A. Not to my remembrance. [223]

Q. Was a vote taken at this meeting?

A. Yes, sir.

Q. What was the vote?

A. Well, they voted, "as carried",—I don't remember the balloting.

Q. But they voted to change the name?

A. To add those words to the title, yes.

Q. Did you have anything to do with the negotiations that led to the signing of the contract between the company and the Association dated in June, 1941?

A. No, sir.

Q. Was there a contract entered into between the company and the Association in June, 1942?

(Testimony of Haskell Duncan.)

A. We reached an agreement—was that signed, Mr. Peters?

Mr. Peters: Yes.

Q. (Mr. Penfield, continuing) Did you have anything to do with the negotiations with respect to that contract?

A. I attended the meeting when we met with Mr. Gilbert Moyle.

Q. How did you happen to attend the meeting?

A. Mr. Peters requested me to take the place of a committeeman who was on his vacation.

Q. Was this a meeting of the grievance committee?

A. It was the grievance committee, and Mr. Peters as president and me as a replacement.

Q. When was this meeting held? [224]

A. During the latter part of May. I don't recall the exact date.

Trial Examiner Riemer: 1942?

The Witness: Yes, sir; that is the meeting that you are referring to, isn't it?

Mr. Penfield: That is correct.

Q. (Mr. Penfield, continuing) Had the members of your committee on which you served discussed any wage scale prior to meeting with Mr. Moyle?

A. Well, not a formal meeting. There was a list circulated among the various job holders—employees—every one put down what he thought he was entitled to as a raise, and I believe without

(Testimony of Haskell Duncan.)

exception they all put down the same thing, as the first man that wrote it down, did.

Q. Did the committee then draw up a wage scale?

A. We did, and listed there what these fellows asked for.

Q. Was that list presented to Mr. Moyle?

A. Yes, Mr. Peters presented it to him.

Q. Were the names of any truckdrivers included on that list?

A. There were no names on the list at all. It was a list of jobs, rather than names.

Q. Well, were the jobs of any truckdrivers included?

A. Yes, I believe so.

Q. Were truck mechanics also included?

A. I believe so, listed as mechanics. [225]

Q. And the office employees?

A. No, no office employees.

Q. Tell us what occurred at this meeting, with Mr. Moyle, that you testified to which took place the latter part of May, 1942.

Trial Examiner Riemer: Is this Henry or Gilbert Moyle?

The Witness: Gilbert Moyle.

A. (Continuing) Mr. Moyle looked the list over and maybe winced a bit, and said, "It is pretty steep", and he went ahead and told us something about the company financially, and took the matter under advisement and asked us to come back in three days, or five days, I don't remember which.

(Testimony of Haskell Duncan.)

Q. (Mr. Penfield, continuing) Did he say anything about the inclusion of truckdriver on this list? A. Not that I recall.

Q. Did you attend a subsequent meeting with Mr. Moyle? A. Yes, I did.

Q. Was that about four or five days after the first meeting?

A. Three, four or five, I don't remember; it was during the same week.

Q. What occurred at this meeting?

A. Well, Mr. Moyle told us that he had taken the matter under advisement, made some calculations, told us the approximate cost of the raises asked for, and handed us what he considered the best the company could do in the way of a compromise. [226]

Q. Did he hand you a list of wage scales that the company felt they could pay?

A. That is what it amounted to, I believe, yes.

Q. Did that list include the truck drivers?

A. I believe so.

Q. What steps did the grievance committee take following the receipt of this wage scale of Mr. Moyle's?

A. Well, I went home, and I don't know what the rest of them did.

Q. Was any report made to the membership?

A. Not immediately. A meeting was called, but not enough attended,—I suppose for lack of interest—to have a quorum.

Q. Who called the meeting?

(Testimony of Haskell Duncan.)

A. Mr. Peters .

Q. Was there a notice posted?

A. I believe so—wasn't there, Bill?

Mr. Peters: Yes.

Mr. Penfield: Just testify yourself, please.

Q. (Mr. Penfield, continuing) Did you see that notice?

A. As I recall, I was off on my days off. Each week, we have one, two or three days off, and I don't believe that I saw it for that reason.

Q. Did you attend the meeting?

A. No. [227]

Q. Do you know whether or not any action was taken at that meeting?

Mr. Moyle: I object to that on the ground that it would be a pure conclusion of the witness. He said that he wasn't there.

Mr. Penfield: He might have knowledge of it.

Mr. Moyle: It would be hearsay.

Trial Examiner Riemer: Overruled.

A. Well, I was told that there was not a quorum present so the deciding of it was left up to the Board of Directors.

Q. (Mr. Penfield, continuing) Was this meeting held on the same day that you had this second meeting with Mr. Moyle? A. No.

Q. How soon following that meeting was it held?

A. I believe three or four days, but I am not certain.

Q. Was there a meeting of the Board of Di-

(Testimony of Haskell Duncan.)

rectors following the second meeting with Mr. Moyle?

A. We had a regular monthly meeting that came a few days after that.

Q. Did that come a few days after the meeting of the membership that was called? A. Yes.

Q. Was any action taken at the meeting of the Board of Directors? [228]

A. It was decided to adopt the wage schedule offered by Mr. Moyle.

Q. Did that schedule include the truck-drivers?

A. I believe not.

Q. Had there been any change in the schedule as offered by Mr. Moyle?

A. I believe there were two specific positions left off the list. Other than that, it was the same.

Q. What specific positions were left off?

A. Drivers and mechanics.

Q. Do you know how it happened that these names were taken from the list?

A. I was told that it was a typographical error in the list. That is hearsay with me.

Q. Then the list which was presented to the Board of Directors did not contain the job of truckdrivers and mechanics?

Mr. Moyle: I object to that on the ground that the list itself would obviously be the best evidence.

Mr. Penfield: Well, I think that he can testify to that.

Trial Examiner Riemer: Can that be produced?

(Testimony of Haskell Duncan.)

Mr. Moyle: They could produce the contract—

Mr. Penfield: I have every intention of introducing the contract.

Mr. Merrill: Then it is obviously immaterial to ask this witness what the contract contained. [229]

Mr. Penfield: I think that it is material to develop the fact that these names were on and taken off——

Trial Examiner Riemer: Overruled. Read the last question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. That is correct, to the best of my remembrance.

Q. (Mr. Penfield, continuing) Was a vote taken by the Board of Directors? A. Yes.

Q. What was that vote?

A. We voted to adopt the raise as offered by Mr. Moyle.

Q. Was anything said about signing an agreement? A. Yes, there was.

Q. What was said?

A. I don't recall exactly. I believe that the agreement was to be patterned after the previous one of last year, only this was to be for six months instead of a year.

Q. Did you have anything to do with drawing up or signing that agreement?

A. No, I didn't.

(Testimony of Haskell Duncan.)

Q. What dues are paid by the Association members? A. 50 cents per month.

Q. How are these paid?

A. By payroll deduction.

Q. Is there any written authorization for the payroll deduction? [230]

A. The secretary could answer that better than I. The time I joined, I signed a slip to that effect.

Q. You signed an authorization?

A. Yes, sir.

Q. Did you regularly attend meetings when you first joined the Association?

A. Fairly regularly. Of course, when I was on shift——

Q. How often were meetings held?

A. Monthly.

Q. Where were they held?

A. At first, they were held in the company offices.

Q. What company offices—the offices occupied by whom?

A. Well, there are, I understand, three or four companies housed there in one building. At that time, I guess that it was considered the Idaho Refining Company offices. Usually they met in the west wing, anyway, of the office.

Q. Since you joined the Association, has there been an change in regard to the holding of meetings?

A. Yes, we have meetings now of the whole

(Testimony of Haskell Duncan.)

membership only on a special call, or on the annual date for elections.

Q. When did this change take place?

A. Approximately a year and a half ago, as I recall.

Q. How did the change come about?

A. Well, for some time, several fellows had felt that monthly meetings were accomplishing nothing, but wasting our time,— [231] too much talking and no action, or anything, and we felt that it would be better to have a board of directors handle the affairs of the Association, so we talked that over and voted and I believe that the president appointed a committee to overhaul the by-laws to permit that.

Q. Were the by-laws subsequently changed?

A. Slightly. Enough to permit the directors to handle the business affairs.

Q. Was this matter voted on by the membership?

A. What matter?

Q. The change in the by-laws?

A. Yes.

Q. Did you attend a meeting at which it was voted on?

A. Yes.

Q. Was that a meeting of the membership?

A. Yes.

Q. Especially called?

A. I believe that it was called especially for that purpose, yes, sir.

Q. How often do the board of directors meet?

A. Monthly. Not later than the 10th of each month.

(Testimony of Haskell Duncan.)

Q. Where do they meet?

A. In the hall and change room that has previously been mentioned.

Q. Do any of the executives or supervisors of the company ever [232] attend these meetings of the Board of Directors?

A. No, sir; not any meeting that I ever attended.

Q. Did you ever attend any meeting when the membership attended?

A. Well, originally everybody out there attended meetings, practically everyone, as members of the Association.

Q. Did that include executives or supervisors?

A. I don't believe I ever saw Mr. Copening, Mr. Moyle or Mr. Webb attend, or Mr. Peterson.

Q. Who is Mr. Peterson?

A. I think he is treasurer of the company.

Trial Examiner Riemer: John Peterson?

The Witness: Yes.

Q. (Mr. Penfield, continuing) And by Mr. Webb, you mean Arch Webb? A. Yes, sir.

Q. What others do you recall attended?

A. That would pretty well cover the officers at that time, I believe.

Q. How about the supervisory employees?

A. Well, what particular persons do you have in mind?

Q. Well, the superintendent of the plant or any of the foremen that you recall who attended the meetings?

(Testimony of Haskell Duncan.)

A. I think that the superintendent attended occasionally. We changed superintendents several times, it would be pretty hard to keep that in mind.

[233]

Q. Did you ever see Kermit Rice at any of the meetings? A. Yes, Kermit attended.

Q. Did any of these foremen or supervisors serve on any of the committees?

A. Mr. Simpson was president, I believe, two terms, possibly three.

Q. Who is Mr. Simpson?

A. The yard foreman.

Q. Was he yard foreman during the term that he was president? A. Yes.

Q. Do you recall when he was president?

A. Not for sure. I believe that he became president when Mann left the services of the company. That was in the spring of 1939.

Q. Was that before or after you joined the Association? A. After, I believe.

Q. Was he president during the time that you were a member of the Association?

A. Yes. I might clarify Simpson's position, a little bit. He is yard foreman, but he gets right in and works with the rest of the boys, especially on clean-ups.

Q. Does he have any supervisory authority?

A. He has the running of the yard gang, whatever it constituted, someone has to direct it.

Q. Does he hire and fire employees in the yard gang? [234]

(Testimony of Haskell Duncan.)

Mr. Moyle: I think that calls for a conclusion of the witness.

Trial Examiner Riemer: If he knows.

A. I don't recall him ever hiring or firing men directly. He may have made recommendations.

Q. How many men work under him, if you know?

A. They are getting a little scarce,—about four or five, now, I think.

Q. Have there been more at other dates?

A. Yes, they have had as high as possibly 15 during the clean-out periods, when the stills shut down.

We have some extra men we bring in, and he is in charge of those, also.

Q. To your knowledge, has the Association ever paid rent to the company for the use of its premises?

A. I never heard of it.

Mr. Moyle: You mean outside of the building of this building?

Mr. Penfield: I wasn't limiting it to that.

Trial Examiner Riemer: You may examine the witness, later. Anything else, Mr. Penfield?

Mr. Penfield: No, that is all.

Cross Examination [235]

Q. (Mr. Merrill) The Association members, I believe, bestowed their labor on the building of that hall in which you now meet, did they not?

A. Yes, we built it, or largely so.

Q. And you did it on your own time?

A. Yes, sir.

(Testimony of Haskell Duncan.)

Q. And without any pay from the company?

A. Yes, sir.

Q. And you built it there on the company property? A. Yes, sir.

Q. And you now use it under those circumstances? A. Yes.

Q. And that has been used by the Association continuously since it was built? A. Yes.

Q. And that has been about a year and a half, has it not, approximately?

A. Anyway that long. It is pretty hazy in my mind when it was completed.

Q. It serves its purpose exclusively for the members of the Association?

A. I wouldn't say exclusively, no. All the employees out there use it for a change room, the day shift uses it for a lunch room, and there are showers and toilets. [236]

Q. You spoke of a meeting to change these by-laws, or overhaul them. When did that meeting occur?

A. It must have been about two years ago. [237]

Q. At whose suggestion were they overhauled—members of the Association exclusively?

A. Yes, sir.

Q. The company didn't have anything to do with overhauling those by-laws?

A. No, there was a group dissatisfied with the way that the meetings were going.

Q. Well, now, who was the directing head of the revamping of the by-laws?

(Testimony of Haskell Duncan.)

A. Well, I presume that you would say the president of the Association at that time.

Q. Did he appoint a committee for that purpose? A. Yes, sir.

Q. Did he consult, if you know, with anyone outside of the Association?

A. I would have no knowledge of that.

Q. Were you a member of the committee that assisted in the revamping of them? A. I was.

Q. At the time that you revamped them, did you have forms from another similar association?

A. There was a form there, yes.

Q. From what association?

A. Skelley Oil Company of Eldorado, Kansas.

Q. That was the form that you followed in the revamping of [238] your by-laws?

A. We got some ideas from that, yes.

Q. Had you previously worked for the Skelley Oil Company? A. No, sir.

Q. For whom did you work prior to coming here? A. The Shell Oil Company.

Q. Where? A. Kansas City, Kansas.

Q. When these by-laws were overhauled, was the name changed? A. I believe not.

Q. When was the name changed with reference to the overhauling of the by-laws?

A. It wasn't changed—oh, I see.

Q. I mean with reference to time?

A. Yes, when that "and Labor" was added?

Q. Yes; was that before or after?

A. That was before.

(Testimony of Haskell Duncan.)

Q. Now, with reference to the change of these by-laws, what was the pertinent change?

A. Well, practically the only change was that the business affairs of the organization were placed in the hands of the Board of Directors.

Q. And thereafter the Board of Directors handled the affairs? A. That's right.

Q. I believe you said no supervisor or any officer of the [239] company ever attended any of the board meetings?

A. I don't believe that I said that. Mr. Simpson was president of the Association at the time that we overhauled them. He was chairman of that meeting, and the chief chemist was a member.

Q. The chief chemist was who?

A. Mr. G. L. Farnsworth, at that time. [240]

Q. Now, with reference to Mr. Simpson, he merely directed the crew in the yard wherein he works, I believe you said? A. That's right.

Q. And during the period of time that he was president of the Association, the by-laws were amended?

A. That is the way that I remember it, yes.

Q. Have you ever seen any officer of the corporation ever before the Board, unless the Board called upon the officers for some contracting negotiations?

A. You mean this board of directors we are now operating?

Q. Yes, or any board.

(Testimony of Haskell Duncan.)

A. Well, that is the only board that I can think of. I haven't seen any officer before them, no.

Q. And it handles the affairs of the Association? A. That's right.

Q. Now, I believe that you said membership in the Association entitled you to sick benefits?

A. Yes, sir.

Q. And to hospital benefits? [241]

A. Yes, sir.

Q. And to various other similar types of benefits?

A. Well, we used some of our extra proceeds from our concession out there as funds to hold parties and dances.

Q. So, you have social benefits, likewise?

A. Yes, sir.

Q. Now, the individuals who become employees of the company have the right to join the Association? A. Oh, yes.

Q. And they do join the Association, usually, I understand?

A. I think it has been usually the case.

Q. (Mr. Merrill, continuing) Now, Mr. Duncan, to your knowledge has any officer or supervisor of the Idaho Refining Company dominated or coerced or directed the affairs of your Association?

Mr. Penfield: I object that that calls for a conclusion.

Trial Examiner Riemer: Overruled.

(Testimony of Haskell Duncan.)

A. I didn't think so, no; I would say "no", to that.

Q. (Mr. Merrill, continuing) The Association has acted absolutely independently, has it not?

A. To the best of my knowledge.

Q. And you have observed nothing that would indicate the [242] contrary?

A. That's right.

Q. I believe that you stated that when the name of the Association was changed, they were advised by one of the members of the Association that it was to conform to the National Labor Relations Act?

A. Mr. Henninger made that argument before the meeting that day.

Q. So that it would be a bargaining unit?

A. That was his argument.

Q. And that change then was effected by a vote of the Association?

A. That's right.

Q. And at an Association membership meeting?

A. Yes, sir.

Q. You spoke of Mr. Henry D. Moyle having a meeting with the employees?

A. Yes, sir.

Q. That meeting occurred, I understand, in the yard?

A. Yes, it was outside of the office.

Q. And he spoke from the steps of the office?

A. That's right.

Q. Isn't it a fact that all of the employees of the Association were called,—I mean the employees of the company?

(Testimony of Haskell Duncan.)

A. I believe that is correct. [243]

Q. Mr. Moyle, as a matter of fact, never mentioned the Association, did he?

A. I repeat, that as I remember it, Mr. Moyle said the discount would be made to the members of the Association.

Q. You may be mistaken on that?

A. It is possible.

Q. It is possible that he made the comment that the discount would be allowed to the employees of the company?

A. That has been three years ago, or a little more, and I am possibly mistaken, but my memory serves me to the contrary.

Q. What about the housing plan, was that for any employee or members of the Association?

A. I believe that was for employees.

Q. Now, Mr. Moyle at that time never mentioned anything about anybody joining any Association, did he? A. No.

Q. And never made any comment as to whether the company wanted them to, or whether it didn't?

A. No. [247]

Trial Examiner Riemer: Mr. Peters?

Mr. Peters: No questions.

Q. (Trial Examiner Riemer) Does the Association have any concessions out in the refinery?

A. We operate a drink dispenser, a mechanical device, and sell cigarettes and tobacco through the boiler department.

(Testimony of Haskell Duncan.)

Q. Is this drink dispenser one of these things where you put in a nickel and out comes a bottle of Coca Cola?

A. Well, we have a selector. We can choose our drink.

Q. You have a choice? A. Yes.

Q. Who owns this mechanical apparatus?

A. The Association.

Q. Who makes the profit, if any, on the drinks?

A. The Association.

Q. What other concession is there?

A. The last few months, we have been handling cigarettes and other tobaccos from the boiler house, with the boiler firemen selling them and collecting for them, and doing it without pay.

Q. Who makes the profit, if any, on the cigarettes?

A. That goes to the Association treasury. [249]

DELMAR R. PETERS

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name for the record.

The Witness: Delmar R. Peters.

Trial Examiner Riemer: Where do you live?

The Witness: 720 East Oak, Pocatello.

(Testimony of Delmar R. Peters.)

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Idaho Refining Company.

Q. In what capacity?

A. Gasoline treater. [250]

Q. Are you a member of the Association?

A. Yes, sir.

Q. When did you join? A. In May, 1939.

Q. Was that immediately after you came to work? [251]

A. Yes, immediately after I came to work.

Q. Have you ever held any offices in the Association?

A. Yes, this is my second time as president.

Q. Did you hold any office before you became president? A. No.

Q. Did you serve on any committees?

A. No.

Q. When were you first elected president?

A. January, 1941.

Q. When were you re-elected president?

A. January, 1942.

Q. And when does your present term expire?

A. The 31st of December, 1942.

Q. In May of 1941, did you participate in any negotiations with respect to wage increases?

A. Yes, I did.

Q. Will you explain your participation?

A. Well, my participation was in the role of president, at the meeting with Mr. Gilbert Moyle.

Q. Now, will you please explain, was there a

(Testimony of Delmar R. Peters.)

petition passed around in regard to wage increases at that time? A. Yes, there was.

Q. Who was passing that petition around?

A. As I recall it, it was the operators on the unit.

Q. Was this a committee of the Association?

[252]

A. There was no special appointed committee.

Q. This was not the grievance committee, then?

A. No, sir.

Q. Nor any other committee?

A. It wasn't the grievance committee, no.

Q. The men were merely members of the Association?

A. Yes, they were members of the Association.

Q. Is it your testimony that it was not an official committee of the Association?

A. It wasn't at first in the circulation of the petition, but it fell into that category shortly after.

Q. Did you attend a meeting with Mr. Moyle in May of 1941? A. Yes, sir.

Q. In what capacity?

Mr. Moyle: Did you say 1941?

Mr. Penfield: I said 1941.

A. I was president.

Trial Examiner Riemer: Will you please distinguish between Henry Moyle or Gilbert Moyle?

Mr. Penfield: Yes, I am sorry.

Q. (Mr. Penfield, continuing): With Mr. Gilbert Moyle? A. Yes, sir.

Q. Who was with you?

(Testimony of Delmar R. Peters.)

A. Well, at that time, members of the Association contacted Mr. Moyle for a meeting, and he gave us the date to call the [253] meeting when he could meet with us.

Q. Who were present when you contacted Mr. Moyle for a meeting?

A. No, we contacted him through our superintendent.

Q. Who did? A. The Association did.

Q. You personally, acting as president of the Association? A. Yes.

Q. Did you have a meeting?

A. Yes, we did.

Q. Who was present at this meeting?

A. The members of the Association.

Q. Did you have any meeting before that of a committee? A. No.

Q. Do you know if a wage scale had been presented to the company before this meeting of the members of the Association? A. Yes, sir.

Q. Who had presented that?

A. W. M. Miller, the superintendent.

Q. Is it your testimony that there never had been a meeting at which a committee of the employees presented a wage scale to Mr. Moyle?

A. Not at that time, no.

Q. It is your testimony that there was not such a meeting?

A. That's right; it was presented to Mr. Moyle through the [254] superintendent.

(Testimony of Delmar R. Peters.)

Q. (Trial Examiner Riemer): How did Mr. Miller get this wage scale?

A. Well, we gave—the Association gave it to Mr. Miller to present to Mr. Moyle.

Q. How did the wage scale come into your possession?

A. Well, by the members of the Association.

Q. (Mr. Penfield, continuing): By what members?

A. I don't exactly remember the names of the members.

Q. Do you remember any of the names?

A. No, I don't distinctly remember any one particular person.

Q. What occurred at this meeting of the membership that you stated was held in the latter part of May?

Mr. Moyle: This is 1941?

Mr. Penfield: Yes, 1941.

A. Well, Mr. Moyle talked to us boys concerning this wage increase, then he read off the proposed scale by the company and we took a vote on it, whether to accept it, and it passed.

Q. Were any truckdrivers present at this meeting?

A. As I recall, there were two or three truckdrivers.

Q. Did the proposed wage scale include the truckdrivers?

A. Not as I recall, no.

(Testimony of Delmar R. Peters.)

Q. You say that Mr. Gilbert Moyle was at this meeting? A. Yes.

Q. Did he say anything about the truckdrivers? [255]

A. As I recall, he told the truckdrivers that the company would take care of them later.

Q. Did I understand you to testify that there was a vote taken at this meeting? A. Yes, sir.

Q. What was that vote?

A. It was a majority. I don't remember the exact majority, but it was a clear cut majority.

Q. To accept this proposal?

A. To accept this proposal, yes, sir.

Q. Was anything said about drawing up an agreement?

A. Mr. Gilbert Moyle wanted to know if we would sign an agreement for a year at those wages.

Q. Solely on behalf of persons working in the plant proper? A. Yes, sir.

Q. Did he say any agreement was to be signed by the Association?

A. Well, it would have to be signed by the members of the—by the officers of the Association to make it binding on their behalf.

Q. Did you participate in the drawing up of an agreement following this meeting of the membership?

A. Well, the secretary and treasurer at that time—

Q. Who was secretary and treasurer at that time?

(Testimony of Delmar R. Peters.)

A. Earl Porter contacted Ben Peterson. [256]

Q. Who is Ben Peterson?

A. He is an attorney in town—to draw up a working agreement. We gave him what we wanted in this agreement, and he drew it up for us.

Q. How long after this meeting of the membership did you see Mr. Peterson?

A. Oh, I don't exactly recall. It was a few days.

Q. How long was it before he drew up the agreement?

A. Well, after we contacted him, he drew it up within the next day or so.

Q. Did you present it to the company after that?

A. Yes, sir.

Q. Whom did you present it to?

A. We presented it to Mr. John Peterson.

Q. Who was Mr. John Peterson?

A. He was the treasurer, I believe, of the company at that time.

Q. Had you signed it at that time?

A. Yes, Mr. Porter and I had signed it.

Q. Did any representatives of the Company sign it?

A. Yes, it was signed by Mr. John Peterson and Mr. Gilbert Sheets.

Q. Was that right at the same time you presented it?

A. No, it wasn't signed at the same time.

Q. I show you Respondent's Exhibit 1 for iden-

(Testimony of Delmar R. Peters.)

tification and [257] ask you if this is the agreement which was signed? A. Yes.

Q. Is there anything said about truck drivers in that agreement?

Mr. Moyle: The agreement speaks for itself—I object to that.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing): Are there any agreements between the company and the Association in existence covering truck drivers?

Mr. Moyle: That calls for a conclusion of the witness.

Trial Examiner Riemer: Overruled.

Mr. Moyle: Ask him if truck drivers are members of the Association.

The Witness: Truck drivers are members of the Association.

Q. (Mr. Penfield, continuing): Is there any agreement between the Company and the Association covering the wage scale of truck drivers, and truck mechanics?

Mr. Moyle: We submit that question is objectionable. It is calling for a legal conclusion as well as a conclusion of fact.

Trial Examiner Riemer: The objection is overruled. Read the question.

(Thereupon the last question was read aloud by the reporter, as hereinabove recorded.) [258]

A. None other than what appears on the 1942 wage agreement. I think that the truck drivers and mechanics appear on there.

(Testimony of Delmar R. Peters.)

Q. Well, in 1941, was there ever any agreement?

A. Not that I know of.

Q. In May of 1942, did you participate in any negotiations with respect to wage increases?

A. Yes.

Q. Will you tell us what your participation was?

A. As the role of president.

Q. Well, I understand that it was in that capacity, but will you describe to us just what negotiations took place?

A. I contacted personally every member of the Association with the exception of the truck drivers and mechanics concerning a new wage scale to be presented to the company, and through Mr. E. V. Smith, the superintendent, I arranged for a date for an appointment with Mr. Gilbert Moyle concerning this wage increase.

The grievance committee and myself met with Mr. Moyle at the appointed time.

Q. At what time was this meeting?

A. It was in the latter part of May of this year, 1942, and I don't remember the exact date.

Q. What did you request at this meeting?

A. The amount of raise?

Q. Yes. [259]

A. Well, it was 20 cents an hour raise—20 cents an hour.

Q. Who were the members of this committee?

A. Haskell Duncan and Devereaux—I don't know his first name—and Brown, who is a mechanic—I don't know his initials,—and myself.

(Testimony of Delmar R. Peters.)

Q. Did I understand you to say that you presented a wage scale to the management calling for an increase? A. Yes, sir.

Q. Did this increase include the truck drivers?

A. Yes, sir.

Q. What did Mr. Moyle say to you at that time?

A. He told us that he would have to take the matter up—take the matter under consideration and that he would meet with us again in a few days.

It was the latter part of that week, I believe.

Q. Did you meet with him again?

A. Yes, we did.

Q. About how many days later?

A. Oh, it was about four or five, something like that.

Trial Examiner Riemer: Is this Gilbert Moyle?

The Witness: Yes, Mr. Gilbert Moyle.

Q. (Mr. Penfield, continuing): What did he tell you on that occasion?

A. Well, he told us—he gave us the copy of the proposed scale by the company, and told us that under the circumstances [260] he believed that this was about the best that he could do at the present time.

Q. Did the scale that he gave you include truck drivers? A. No.

Q. It did not? A. No.

Q. Did he make any explanation why truckdrivers were left off? A. No, he didn't.

Q. Did you question him in regard to that?

A. No, we didn't.

(Testimony of Delmar R. Peters.)

Q. Did I understand you to testify that Mr. Brown is a truck mechanic? A. Yes.

Q. Was he present at this second meeting?

A. No, he wasn't.

Q. Was there any meeting of the Association members held subsequent to this second meeting with Mr. Moyle?

A. Yes, we called a meeting after that.

Q. Who called it? A. I did.

Q. You did, as president? A. Yes.

Q. When was this meeting held?

A. It was held a few days after the second meeting with Mr. Moyle, I believe, about three or four days—five days. [261]

Q. How many members were present?

A. I believe that there were only about 12.

Q. Was that a quorum?

A. No, 15 is a quorum.

Q. But no official action was taken at this meeting? A. No.

Q. Was there a meeting of the Board of Directors held subsequent to that? A. Yes.

Q. How soon afterwards?

A. Oh, it was right shortly after that—just a few days.

Q. A few days afterwards? A. Yes.

Q. Was any vote taken at this meeting?

A. Yes.

Q. What was the vote?

A. We voted to accept the proposed agreement.

(Testimony of Delmar R. Peters.)

Q. That is the scale that Mr. Moyle had given you at the second meeting? A. Yes.

Q. The one that did not include truck drivers?

A. Yes.

Q. Had this wage scale of the company's ever been posted? A. It had.

Q. Where was it posted? [262]

A. On the bulletin board in the change room.

Q. Did it meet with any objections from the truck drivers?

A. I didn't hear of anything, and they had plenty of time.

Q. The vote was to accept the scale as presented?

A. Yes.

Q. Did you discuss an agreement at this meeting of the Board of Directors? A. Yes.

Q. What was the discussion with respect to an agreement?

A. Well, we drew up another agreement.

Q. Did you have an attorney on this occasion?

A. No, our secretary-treasurer copied the previous agreement with the exception——

Q. Exactly?

A. No, not exactly. He left out one or two things, I don't know just what they were. I don't remember the exact words. He would have to tell you that.

Q. Did the Board of Directors vote to include in that agreement the wage scale that had been presented by the company? A. Yes.

(Testimony of Delmar R. Peters.)

Q. And that wage scale did not include truck drivers?

A. Now, I am not positive whether the truck drivers and the mechanics are mentioned in that.

Q. Well, I asked you if that wage scale that was given you by the company at the second meeting included truckdrivers and [263] you have already testified that it did not, is that correct?

A. Well, it did not include the raise, but the names of truckdrivers and mechanics was mentioned in this proposal——

Q. But there was no provision for any raise for them? A. No, there was no raise.

Trial Examiner Riemer: The hearing will recess at this time until 1:30.

Mr. Witness, please return at that time.

(Whereupon, at 12:30 p. m. a recess was taken until 1:30 p. m.) [264]

Afternoon Session

(Whereupon, at 1:30 p. m. the hearing was resumed, pursuant to the taking of noon recess, as follows:)

Trial Examiner Riemer: The hearing will be in order. Mr. Peters, resume the stand.

Q. (Mr. Penfield, continuing): Mr. Peters, how long after this meeting of the Board of Directors was the agreement drawn up?

(Testimony of Delmar R. Peters.)

A. Well, it was just a few days. I can't tell you the exact number of days. I think Mr. Carlson can.

Q. Who presented it to the company?

A. Mr. Carlson, I think.

Mr. McKay: Are you talking about 1941 or 1942?

Mr. Penfield: 1942. That was the subject I was on, I believe, before recess.

Q. (Mr. Penfield, continuing): I show you this agreement and ask you if that is the agreement that was presented to the company?

A. Yes, that is it.

Q. You have testified that it was agreed at this meeting of the Board of Directors that the form of the 1941 agreement should be followed?

A. Yes, with the exception of a few lines.

Q. What were those lines?

A. I don't know. I don't remember those lines.

[265]

Q. Did they concern anything about the truck drivers, or truck mechanics? A. No.

Q. This agreement includes a wage scale for truck drivers and truck mechanics, doesn't it?

A. Yes.

Q. Was it agreed at that meeting that a wage scale for truck drivers and mechanics should be included in this agreement?

A. Well, we copied the list of all the employees on that wage schedule.

Q. I will show you Respondent's Exhibit 1 for

(Testimony of Delmar R. Peters.)

identification and ask you if that contains a wage scale for the truck drivers?

A. No. That is the 1941 agreement.

Trial Examiner Riemer: I think that it was said that it was copied into the May 1942 agreement, the wage scale submitted to them by Mr. Moyle.

Mr. Penfield: Well, I understood him to testify that it was agreed that they would copy the 1941 agreement.

Q. (Mr. Penfield, continuing): Wasn't that your testimony?

A. I think I said with the exception of a paragraph or a few lines, I am not sure.

Q. I asked you if anything was said about the wage scale for the truck drivers and the truck mechanics?

A. In the 1942 agreement? [266]

Q. Yes. I asked you if any of those exceptions included the wage scale for truck drivers and truck mechanics.

A. Well, we didn't consider the truck drivers and the mechanics in this 1942 agreement, any special consideration—they were on the proposed wage scale for the company.

Q. They were on the proposed wage scale submitted by the company?

A. Yes, for 1942, and we copied that into the 1942 agreement.

Q. You copied the wage scale submitted by the company in 1942?

A. Yes, sir; in the 1942 agreement.

(Testimony of Delmar R. Peters.)

Q. Do I understand your testimony is that the wage scale furnished you by the company included a wage scale for truck drivers and truck mechanics?

A. Yes, it was on the proposed scale.

Q. Were they granted any increase?

A. Well, since that agreement was signed, I understand some men in the truck department, I don't know who, have been granted wage increases.

Q. Were they granted any increases in the wage scale that was furnished you by the company?

A. No, not in that scale.

Q. Has the Association taken any further action with respect to getting increases for the truck-drivers? A. No, we haven't. [267]

Q. And that agreement, as signed, included the wage scale they had formerly gotten in 1941—well, I will put it this way—did that include their existing wage scale with no increases?

A. Yes.

A. Mr. Penfield: May I go off the record?

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Mr. Moyle: The exhibit which heretofore has been marked for identification as Respondent's Exhibit 1, will be withdrawn by the respondent for the purpose of permitting the Board's attorneys to mark it as their exhibit and offer it in evidence.

Mr. Penfield: I will now offer as Board's Exhibit 8, the 1941 agreement.

(Testimony of Delmar R. Peters.)

Trial Examiner Riemer: I assume there is no objection.

Mr. Moyle: No.

Trial Examiner Riemer: It may be admitted, and marked in evidence as Board's Exhibit 8, which was formerly marked Respondent's Exhibit 1 and withdrawn at Mr. Moyle's request.

(Whereupon the document previously marked as Respondent's Exhibit 1 for identification was withdrawn, and re-marked as Board's Exhibit 8 for identification, and received in evidence as Board's Exhibit 8.)

BOARD'S EXHIBIT NO. 8

AGREEMENT

That for and in consideration of the premises and the mutual covenants and promises hereinafter set forth, The Idaho Refining Company Employees' Benefit and Labor Association, party of the first part, and The Idaho Refining Company, a corporation party of the second part, hereby agree as follows:

It appearing that the parties hereto are desirous of entering into an agreement by the terms of which a certain definite, designated wage scale for the employees of the party of the second part shall be fixed for the year ensuing, that is, from the 1st day of June, 1941, to the 31st day of May, 1942.

It also appearing that The Idaho Refining Company Employees' Benefit and Labor Association is

(Testimony of Delmar R. Peters.)

an organization of the employees of The Idaho Refining Company and that said organization is a duly organized association having a president and secretary, and that among the purposes of the organization is one to promote labor and employment programs and to negotiate and enter into agreements pertaining to employment and wage scales.

It further appearing that upon the 21st day of May, 1941, a general meeting of the members of the association herein referred to was held, pursuant to notice and a quorum of the members of said association was present. A resolution as to minimum wages was presented and passed by a vote of the members of the association present, which scale of wages is as hereinafter set out.

It is agreed by and between the parties hereto that the hourly wage scale which said parties to this agreement have agreed upon is as follows for the various types of employment:

Operators	1.05 per hour
First Helpers	.82 per hour
Treaters	.77 per hour
Boiler Fireman	.72 per hour
Pumpers	.72 per hour
Pipe Fitter	.70 per hour
Mechanic	.80 per hour
Welder	1.00 per hour
Warehouse	.66 per hour
Yardmen	.66 per hour
Instrument men	.90 per hour

(Testimony of Delmar R. Peters.)

That in addition to the specification set forth in the above wage scale, yardmen are to be paid and receive pay as follows:

First 6 months of employment	.55 per hour
Ensuing 12 months	.60 per hour
After 18 months herein referred to	.66 per hour

It further appearing that the Idaho Refining Company, a corporation, the employer, is willing to pay the scale for wages as hereinbefore set forth and does by this agreement agree to pay said scale for the year ensuing.

It is understood that in addition to the wage per hour as above set forth, each employee is entitled to and shall receive time and one-half for all overtime in which he is employed by the employer.

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

THE IDAHO REFINING COM-
PANY EMPLOYEES' BENE-
FIT AND LABOR ASSOCIA-
TION

By DELMAR R. PETERS
President

Attest:

EARL B. PORTER
Secretary

Party of the First Part

THE IDAHO REFINING COM-
PANY, a corporation

By GILBERT SHEETS
President

(Testimony of Delmar R. Peters.)

Attest:

F. L. COPENING, JR.

Secretary

Party of the Second Part

Mr. Penfield: I will now offer as Board's Exhibit No. 9, the [268] 1942 agreement between the Association and the Idaho Refining Company.

Trial Examiner Reimer: You have seen that Mr. Moyle?

Mr. Moyle: Yes, that is satisfactory.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 9.

(Whereupon the document hereinabove referred to was marked and admitted in evidence as Board's Exhibit 9.)

BOARD'S EXHIBIT NO. 9

AGREEMENT

That for and in consideration of the premises and the mutual covenants and promises hereinafter set forth, The Idaho Refining Company Employees' Benefit and Labor Association, party of the first part, and The Idaho Refining Company, a corporation party of the second part, hereby agree as follows:

It appearing that the parties hereto are desirous of entering into an agreement by the terms of which a certain definite, designated wage scale for the em-

(Testimony of Delmar R. Peters.)

ployees of the party of the second part shall be fixed for the period ending November 30, 1942, that is, from the 1st day of June, 1942, to the 30th day of November, 1942.

It also appearing that the Idaho Refining Company Employees' Benefit and Labor Association is an organization of the employees of The Idaho Refining Company and that said organization is a duly organized association having a president and secretary, and that among the purposes of the organization is one to promote labor and employment programs and to negotiate and enter into agreements pertaining to employment and wage scales.

It is further appearing that up the 15th day of May, 1942, a general meeting of the members of the association herein referred to was held, pursuant to notice and a quorum of the members of said association was present. A resolution as to minimum wages was presented and passed by a vote of the members of the association present, which scale of wages is as hereinafter set out.

It is agreed by and between the parties hereto that the hourly wage scale which said parties to this agreement have agreed upon is as follows for the various types of employment.

		91*
Loading Dock .....	.79 per hour	
Loading Dock Helper .....	.66 per hour	
Operators	1.15 per hour	1 05*
First Helper .....	.93 per hour	82*
Treators .....	.88 per hour	77*
Boiler Firemen .....	.79 per hour	72*
Instrument Man	1.10 per hour	90*

(Testimony of Delmar R. Peters.)

Welder	1.49 per hour	1 00*
Truck Men in Yard .....	.73 per hour	
Yardmen .....	.73 per hour	55-66*
Pipe Fitter .....	.92 per hour	70*
Machinist	1.10 per hour	
Machinist Helper .....	.73 per hour	
Truck Drivers .....	.60 per hour	
Mechanics .....	.75 per hour	80*
Grease Men .....	.55 per hour	

* Figures in pencil.

That in addition to the specification set forth in the above wage scale, yardmen are to be paid and receive pay as follows:

First 6 months of employment	.60 per hour
Ensuing 12 month	.66 per hour
After 18 months herein referred to	

It further appearing that the Idaho Refining Company, a corporation, the employer, is willing to pay the scale of wages as hereinbefore set forth and does by this agreement agree to pay said scale for the six months ensuing.

It is understood that in addition to the wage per hour as above set forth, each employee is entitled to and shall receive time and one-half for all over-time in which he is employed by the employer.

(Testimony of Delmar R. Peters.)

In Witness Whereof, the parties hereto have set their hands and seals the day and year first above written.

THE IDAHO REFINING COM-
PANY EMPLOYEE'S BENE-
FIT AND LABOR ASSOCIA-
TION

By DELMAR R. PETERS
President

Attest:

P. W. CARLSON
Secretary
Party of the First Part

THE IDAHO REFINING COM-
PANY, a corporation
By GILBERT D. MOYLE
G. Mgr.

Attest:

F. L. COPENING, JR.
Secretary
Party of the Second Part

Q. (Mr. Penfield, continuing) Are employees of the Covey Gas & Oil Company members of the Association?

A. They were at one time, but I don't know whether they are now or not.

Q. Are employees of the Idaho Gas & Oil Company members of the Association?

(Testimony of Delmar R. Peters.)

A. I don't know as to that. The secretary-treasurer can tell you that.

Mr. Penfield: I believe that is all I have of this witness.

Cross Examination

Q. (Mr. Moyle) Now, in all of your experiences since you became an employee of the respondent refinery, has anybody connected with the company ever suggested anything to you about belonging to or maintaining a company union in preference to an outside union?

A. No. [269]

Q. Do you know of anything which has transpired which has influenced you, or which has tended to influence you, or any other member of the Association to do other than as you pleased about labor relations?

A. No, it is left entirely up to us.

Q. Have you heard of any expression from anybody connected with the company as to whether they preferred you belong to one organization rather than another? A. No.

Q. And you have felt perfectly free to do as you pleased?

A. Yes.

Q. And these vending machines that you have in this building that you built were bought and purchased by the Association? A. Yes.

Q. The company contributed nothing towards them? A. No.

(Testimony of Delmar R. Peters.)

Q. And had no interest in them at all?

A. No.

Q. And that is true of the sale of any other commodities that you sold to members of your association?

A. Yes.

Q. Do you know now whether all of the employees of the refinery are members of your association? A. I am not positive about that.

Q. The discount that has been given you on gasoline is a [270] discount that was allowed any employee of the refinery, was it not?

A. Well, since I have been there, it has been that way. I don't know anything about it prior,—

Q. About what happened before you came?

A. Yes.

Q. And you have never heard since you came to the refinery of any restrictions upon that discount to members of your Association?

A. No.

Q. Or that an employee had to be a member of the Association to get the discount?

A. No, I had never heard anything like that.

Q. So, as a matter of fact, you get that gasoline from the Covey Gas & Oil Company of Idaho, and they bill the refinery for it, isn't that correct?

A. Yes.

Q. Then your account with the refinery is charged with whatever you buy at the Covey Gas & Oil Company of Idaho stations?

(Testimony of Delmar R. Peters.)

A. Yes. [271]

Q. Now, you stated that you presented the petition in 1941 to Mr. Moyle through Mr. Miller, the superintendent, that was a method of presenting this petition that you selected of your own choice?

A. That's right.

Q. You had received no instructions from the company to go to Mr. Moyle through Mr. Miller?

A. No.

Q. But that was done by the Association simply as a matter [273] of convenience to you as its president?

A. That's right.

Q. The attorney that you retained, Mr. Ben Peterson, is a practicing lawyer here in Pocatello?

A. Yes.

Q. And you paid him for his services out of the funds of the Association?

A. Yes.

Q. I think that you stated you told him what you wanted in the agreement? A. Yes.

Q. And had him draw it up so it would give you what you wanted? A. Yes.

Q. And that was the agreement that you signed and gave to the company and the agreement which the company signed without modification?

A. Yes. [274]

P. W. CARLSON

was called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Tell us your name, please?

The Witness: P. W. Carlson.

Trial Examiner Riemer: Where do you live?

The Witness: Out by the Kraft Cheese Company.

Trial Examiner Riemer: Is that in Pocatello?

The Witness: Well, I don't know whether it is in the city or not. It is out north.

Mr. Moyle: The Kraft Cheese Company is next door to the [282] refinery.

Direct Examination

Q. (Mr. Penfield) Are you an employee of the Idaho Refining Company?

A. I am.

Q. In what capacity? A. As clerk.

Q. When were you first employed?

A. September in 1941.

Q. What are your duties?

A. Well, in a bookkeeping nature. Working the yield report for one, keeping accounts receivable.

Q. Are you a member of the Idaho Refining Company Benefit & Labor Association?

A. Yes.

Q. When did you join?

A. Well, it was in October, right after I came to work.

(Testimony of P. W. Carlson.)

Q. When did you first attend a membership meeting?

A. Well, the first one was in—I think that the first one I attended was in January.

Q. Do you hold any office in the Association?

A. Secretary-treasurer.

Q. When were you elected?

A. I was elected at this meeting in 1942.

Q. The meeting in January, 1942? [283]

A. That's right.

Q. Which was the first one you attended?

A. That's right.

Q. Had you been informed in advance of the meeting that you might be nominated for secretary-treasurer?

A. Yes, I had.

Q. Who had informed you?

A. Well, there were two or three who had informed me. Earl Porter is one. He wanted to give his position up, so he informed me that he was going to ask me if I would accept the nomination if I became nominated, and of course, I said I would.

Q. Was there a nominating committee?

A. Yes.

Q. Who was on the nominating committee?

A. I think Spike Henninger was one.

Q. Is he the chairman?

A. I believe that he is.

Q. Who is Spike Henninger?

A. He is the dock foreman.

(Testimony of P. W. Carlson.)

Q. Who made the nomination at this meeting?

A. Who made the nomination?

Q. Yes.

A. I don't recall.

Q. Was it Henninger?

A. It could have been. [284]

Mr. Penfield: I now offer the by-laws of the Association [289] as accepted at a meeting of February 12, 1941.

Q. (Trial Examiner Riemer) Who turned the by-laws over to you, Mr. Carlson?

A. Mr. Porter

Q. Where is Mr. Porter now?

A. He is with the Idaho Refining Company in the office.

Q. At Pocatello?

A. Out at the refinery in Pocatello.

Q. Did he inform you that he was giving you all the records in his possession?

A. All that he had in his possession, yes.

Q. He didn't tell you that there were some records missing?

A. Well, only the minutes that he referred to.

Q. Did he say anything about the by-laws?

A. No, sir.

Q. You have never seen the original of the by-laws?

A. No, if they are not the originals, I haven't seen them.

Mr. Penfield: I offer this in evidence.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: The Board offers the Association by-laws. Is there any objection?

Mr. Moyle: No.

Trial Examiner Riemer: They may be admitted, and so marked.

(Whereupon the document heretofore marked as Board's Exhibit 12 for identification was received in evidence.) [290]

BOARD'S EXHIBIT NO. 12

(Copy)

[Pencil note]: file 19-C-107

BY-LAWS

Article I

Election of Officers

Section I. Election of officers shall be once each year, said election to be held during the month of February, and their term of office shall be for twelve months. An officer may succeed himself only once with the exception of the Secretary-Treasurer.

Section 2. The following officers and committees are to be elected in the order named:

President

Vice-President

Secretary-Treasurer

Grievance Committee Three members

Safety Committee Two members

Social & Welfare Committee Three members

Auditing Committee Two members

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 3. The nominee receiving a plurality of the votes cast to be declared elected. Immediately after the election of each committee the names of the members shall be voted upon by the entire membership present to determine who shall serve as chairman.

Section 4. In case of resignation, or removal or termination of employment with the Idaho Refining Company or subsidiary, of an elected officer or committeeman, the vacancy shall be filled by the President and such appointee shall hold office until the next regular election.

Article II.

Duties of Officers, etc.

Section 1. The President, Vice-President, and Secretary-Treasurer, together with the chairman of the Grievance Committee, the Safety Committee, the Social and Welfare Committee, and the Auditing Committee shall constitute a Board of Directors to transact the business of this Association.

Section 2. It shall be the duty of the President, or in his absence, then the Vice-President, to preside at all meetings of the Association and the Board of Directors.

It shall be the duty of the President, or in his absence, the Vice-President, to call all meetings of the Board of Directors and the Association.

Section 3. The Secretary-Treasurer shall record

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

the proceedings of all meetings of the Association and the Board of Directors. In event of his absence, then the President or presiding officer shall appoint an acting secretary to record the proceedings of such meetings.

The Secretary-Treasurer shall receive all funds due the Association and keep the same in careful account in a depository approved by the Board of Directors.

He shall also pay all bills against the Association only after they have been approved by the Board of Directors at a regular or special meeting. All checks to be made out and signed by the Secretary-Treasurer and countersigned by the President or Vice President.

He shall receive, answer and file all communications of the Association and keep copies of same in a file provided for such purpose.

His accounts shall be balanced and audited by the Auditing Committee every three months.

He shall give a financial report at each regular monthly meeting of the Board of Directors.

At the expiration of his term of office, he shall turn over to his successor all books, papers, files, money and office supplies of the Association.

Section 4. It shall be the duty of the Grievance Committee to receive all grievances of the members, these grievances to be in writing, and consider them. If deemed advisable, the committee will confer with

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

the Company management and report its findings to the affected party or parties, or the Board of Directors or the membership as a whole if this is considered expedient.

Section 5. It shall be the duty of the Safety Committee to receive all suggestions and ideas from the members for promoting safety measures and

In connection with less hazardous working conditions ~~at~~ the Refinery, and its Subsidiaries and after due consideration, if necessary, confer with the Company management concerning their findings.

Section 6. The Social and Welfare Committee shall call upon any and all members who are absent from work because of illness or injury, not later than two days after the beginning of such absence.

This committee shall be the host at all parties and social functions of the Association, and may appoint any members it deems necessary to assist it at any social function.

Section 7. The Auditing Committee shall audit the accounts of the Secretary-Treasurer every three months and post a summary of their audit on the Refinery bulletin board.

Article III

Salaries of Officers

Section 1. The Secretary-Treasurer shall be compensated for his services at the rate of five dollars

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

(\$5.00) per month provided that his books and accounts are in order and posted for the month preceeding each regular meeting of the Board of Directors: This salary to be paid from the undivided profits of the business conducted under the Social-Welfare activities.

Article IV

Bonds of Officers

Section 1. No bonds shall be required of any officer or Director except the Secretary-Treasurer and he shall give a bond through a reputable bonding company in an amount satisfactory to the Board of Directors and said bond shall be valid when accepted and approved by the Board of Directors. The Association shall pay the premium for this bond from its Benefit Funds.

Article V

Qualifications of Officers

Section 1. Any member of this Association shall be eligible to any office after he has been a member in good standing for six (6) months prior to such election or appointment and otherwise qualifies under the Articles and By-Laws of the Association.

Section 2. No member shall be eligible to hold office to exceed two (2) years in succession except the Secretary-Treasurer.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Article VI

Meetings

Section 1. The Board of Directors shall meet not later than the tenth day of each month to transact the regular business of the Association. Five (5) members of the Board of Directors present at any regular or special meeting shall constitute a quorum for the transaction of business.

Section 2. An announcement of each regular monthly meeting of the Board of Directors shall be placed on the Refinery Bulletin Board at least two days prior to such meeting. All members of this Association are welcome to attend the Board meetings to enter into a general discussion of the business at hand.

Section 3. A Committee chairman who is unable to attend a Board meeting shall appoint a member of his committee to be present, said appointee shall have full voting power.

Section 4. Bills and claims against the Association may be presented at any regular or special meeting of the Board of Directors.

Section 5. A general meeting of the members of the Association may be called at any time by the Board of Directors or a petition requesting it, signed by fifteen (15) of the members and presented to the Board of Directors.

Section 6. At a general meeting of the Association fifteen (15) members shall constitute a quorum for the transaction of business.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 7. An officer of this Association can be recalled by a petition demanding his removal signed by two-thirds of the total membership presented at a general meeting of the association.

Article VII

Qualification for Membership

Section 1. All employees regularly listed on the payroll of the Idaho Refining Company and its subsidiary companies are eligible to membership in the Association.

Section 2. Any employee wishing to join must present to the Secretary an application properly filled. This application will be voted on by the Board of Directors at a regular or special meeting. A majority vote will confer membership on the applicant.

Article VIII

Termination and Expulsion

Section 1. Termination of employment from the Idaho Refining Company or its subsidiaries, voluntarily or otherwise, shall terminate membership; but the discharge of any member from the employment during disability or sickness shall not deprive such member of any benefits to which he may be entitled at that time.

Article IX

Dues

Section 1. Dues for a new member shall be one dollar (\$1.00) per month for three months, after this his dues shall be fifty (50) cents per month.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 2. Dues for old members shall be fifty (50) cents per month. All dues shall be deducted from the member's pay check once each month.

Section 3. All dues of this Association are to be kept in a special account known as a benefit fund. This fund shall be used only for the payment of benefits except as otherwise provided for in these By-Laws.

Section 4. The Idaho Refining Company shall pay to the Secretary once each month the total amount of dues collected from the members.

Article X

Benefits

Section 1. The monetary benefits to be obtained by a member of this Association shall be as follows:

(a) If a member in good standing becomes disabled for work by sickness or personal injury, he shall receive nothing for the first three (3) days of disability, but if such disability continues beyond three (3) days, he shall receive, beginning on the fourth day, benefits at the rate of Twenty-one Dollars (\$21.00) per week or fraction thereof during which the disability continues, up to a maximum of six (6) weeks.

(b) Should such sickness or disability continue beyond six (6) weeks, and the member has received full benefits which would accrue to him, he shall receive as an additional benefit the privilege of being carried on the roll as an active paid-up member and

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

be exempt from the payment of dues until he returns to work or at such prior time as the disability shall have been removed to the satisfaction of a reputable physician selected by the Board of Directors.

(c) In cases covered by Workmen's Compensation Laws of the State in which the member may be employed, this association pays nothing.

Section 2. (a) Hospital benefits to the amount of five dollars (\$5.00) per day shall be allowed to any member in good standing who is confined to a hospital by sickness or disability.

(b) Hospital benefits shall not be paid on cases covered by Workmen's Compensation Laws of the State in which the member is employed.

(c) No sick or hospital benefits shall be paid on cases of pregnancy of a married woman who may be a member of this association.

(d) No sick benefits or hospital benefits shall be allowed under this Article when such sickness or disability is caused by immoral conduct of the member or conduct unbecoming a gentleman or of any offense against the Laws of the State in which the member is employed. In the case of any protest or controversy of the above, the Board of Directors will make a ruling.

(e) No member shall receive more than seventy dollars (\$70.00) in hospital benefits in any one calendar year.

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

Section 3. If a member in good standing dies, in cases not covered by the Workmen's Compensation Laws of the State in which the member is employed, his beneficiary shall be paid seventy-five dollars (\$75.00). The Secretary-Treasurer shall keep on file the designated beneficiary of each member of the Association.

Section 4. In case of contagious diseases, where the home is quarantined, a member remaining at home on account of the disease, must when applying for the benefits, have a signed statement from the health officer stating the exact period of time said member had to be absent from duty on account of quarantine.

(a) Quarantine benefits to the same amount as sick benefits will be paid starting on the fourth day of quarantine in cases only where the member is not allowed to work.

(b) The member quarantined must conform to the By-Laws the same as in sickness. A member who will entertain friends or visitors at their home while the house is under quarantine, shall upon the case being established against them to the satisfaction of the Board of Directors, forfeit all quarantine benefits entitled to them at that time.

Section 5. (a) If a member of this association in good standing, becomes sick or injured, he shall notify the Secretary of this Association within four (4) days from the first day of sickness or disability. Failing to give such notice, he shall forfeit all claims

(Testimony of P. W. Carlson.)

Board's Exhibit No. 12—(Continued)

until such time as the Secretary be notified. He shall also present to the Secretary if required a certificate furnished by the Association, filled in and signed by a licensed physician, setting forth his claim for the benefit and which upon approval by the Board of Directors shall constitute authority for the Board to allow the member all the benefits due him under the By-Laws.

(b) The Board of Directors, at the time deemed necessary shall have the power to employ a special physician to examine sick or disabled members; the findings of said physician shall be the basis for compensation. The physician so employed shall be paid out of the benefit funds of the Association.

Article XI

Payment of Bills

Section 1. All sums approved by the Board of Directors payable by this Association shall be payable by check, signed by the Secretary-Treasurer and countersigned by the President or Vice-President, and made payable to the person or firm to which money is due.

The following employees of this Association were present when these By-Laws were accepted at a meeting held Wednesday, February 12, 1941.

(Testimony of P. W. Carlson.)

Q. You testified that you began as secretary-treasurer in February? A. That is right.

Q. So the records prior to the time that you became secretary-treasurer would have been prepared by somebody else? A. Yes.

Q. But they were part of the records that were turned over to you? A. That's right. [292]

Q. What was the first one of these that you prepared?

Mr. Moyle: Is this still Exhibit 13?

Mr. Penfield: Yes.

A. The first one I prepared was from the period February 16 to and including February 28.

Q. Did you receive instructions from Mr. Porter as to the method of preparing these records?

A. Yes, I did.

Q. Have you since prepared the records in accordance with those instructions?

A. Yes, I have.

Q. What is the procedure in which these records are prepared, and what do they show?

A. Well, on the 15th of the month they show the dues, which is 50 cents per month per member, and that is for the members that have been a member for three months, and the first three months, they are charged a dollar a month, and the cokes, the charges for cokes are taken from the records out in the boiler house.

Q. What records in the boiler house?

A. Well, we have a ledger out there, and whenever anyone wants to get some cokes or cigarettes,

(Testimony of P. W. Carlson.)

why their name is put down and the charge made to them. If they wanted three cokes,—15c,—and didn't have the money, their name is put down and they are charged 15 cents. [293]

Q. Do they sign a slip?

A. Not necessarily.

Q. Is there someone who gives them the money when they want money for a coke?

A. Well, we have a cash box out there.

Q. Who has custody of that?

A. The boilerhouse fireman has custody of that cash box.

Q. Who gives him the money?

A. Well, that is received from the selector. When he runs low on nickels, he goes over to the selector and empties it out and makes a record of the cash received, and that way he is reimbursed until he gets to such a status that he is out of funds, then I generally have a fund there in the office for that purpose.

Q. And you give him money on occasions, do you? A. Yes.

Q. Then, do I understand you, that the employees in some instances put nickels into these machines—— A. Yes.

Q. To get the cokes? A. Yes.

Q. Is the same true for cigarettes?

A. Yes.

Q. You have a machine for cigarettes, too?

A. No, it isn't a machine. It is in the form of a cabinet and [294] it has a padlock on it, and of

(Testimony of P. W. Carlson.)

course, when they want cigarettes, why that is opened and they either pay cash or it is charged.

Q. Does the boiler room fireman have custody of that—the key to that? A. Yes.

Q. So in some instances, they will pay cash, and in other instances, they will draw the cash, is that right? A. Yes.

Q. Does the boilerhouse fireman turn over these slips to you? A. Yes, he does.

Q. Are they in the form of slips, or a list?

A. Well, they are a list of them. For instance, the fireman might be on there for a period and the charges that are made on his run are just tabulated right in a line or in a list, and that of course, is checked. His charges are checked against his change when the next fireman comes on.

Q. And then he turns over to you the cash and the amounts that have been advanced with the names of the employees to whom they have been advanced?

A. Well, I pick up the charges twice a month.

Q. You pick them up from him? A. Yes.

Q. Do you pick up the cash from the machine, too?

A. No, he takes care of that, although at the end of the month [295] I pick up the cash and leave him five dollars.

Q. With respect to these charges you pick up, what do you do with them?

A. Well, they are totalled up and tabulated on this list twice a month.

Mr. Moyle: That is Exhibit 13.

(Testimony of P. W. Carlson.)

Q. (Mr. Penfield, continuing): How do you get up the list? I notice in this one corner you have a list of names. Where do you get that list of names?

A. I generally take it right from the payroll, due to the fact that it is more convenient for the payroll clerk to have them in alphabetical order or the way she has them in the payroll books.

Q. You take a list of the entire payroll of the company? A. Yes, sir.

Q. Then what do you do with these charges when you get them? You have one for cigarettes and one for cokes,—you pick them both up from the boiler room fireman?

A. Yes, I total them up, and whatever their charges are for the 15-day period. If it is cigarettes—here is one, cigarettes, cokes, laundry, that is all figured here, and their dues, and then I make a total of the entire deductions there.

Q. And you put that by the employee's name—the particular employee's name for whom you have a charge slip, is that right?

A. That's right. [296]

Q. So some of them may not have any charges, and some of them will? A. That is true.

Q. Who gets the profits from the sale of cigarettes and cokes and other soft drinks?

A. The Association.

Q. Do they own the machine? A. Yes.

Q. Does the Association have a laundry concession?

(Testimony of P. W. Carlson.)

A. Well, I don't know whether you would call it a concession or not, but we have the laundryman pick up laundry there, and of course, the Association gets a discount from the total amount of the laundry during the month.

Q. Whose laundry do they pick up?

A. They pick up laundry from the employees.

Q. The employees of the Idaho Refining Company? A. Yes.

Q. Do they pick up this laundry out at the plant?

A. Yes.

Q. And deliver it out there, also? A. Yes.

Trial Examiner Riemer: Is that a family laundry, or just—

A. Well, it is mostly—they send their greasy overalls and coveralls.

Trial Examiner Riemer: Their work clothes?

[297]

The Witness: Yes.

Q. (Mr. Penfield, continuing): Could they send their family clothes, also?

A. To my knowledge, they can.

Q. Do they ever, to your knowledge?

A. Well, I couldn't say "yes" or "no" on it. It seems to me that one or two of them have; that can be picked up and the charges run through their payroll.

Q. You mean that they would pick them up at the employees' homes? A. That's right.

Q. Then how are these charges submitted?

(Testimony of P. W. Carlson.)

A. Well, twice a month, the National Laundry presents a bill, giving the list of all employees who have had any laundry during this period. They list their names and amounts due, and that of course, is run on this list as a payroll deduction.

Q. As I understand it, they submit you an itemized list of the work done during that particular two weeks' period?

A. Yes, for the employees.

Q. With the amounts beside it, and what do you do with those amounts?

A. Well, those amounts on the bill are tabulated on this sheet opposite their names in the column headed,——

Q. In the column headed "Laundry"?

A. Laundry. [298]

Q. What do you have in this column headed "Total"?

A. That is the total of it. That is cigarettes, cokes, and laundry, for each individual member and employee.

Q. And you say you make this up twice a month?

A. Yes, sir.

Q. Do the sheets that you make up on the first have any item for dues? A. No.

Q. Do the sheets that you make up on the 15th?

A. Yes.

Q. Otherwise, they are the same?

A. That's right.

(Testimony of P. W. Carlson.)

Q. Then you tabulate the amounts for each individual due you?

A. Yes.

Q. What do you do with them then?

A. Then this record is turned over to the payroll clerk.

Q. What does the payroll clerk do?

A. Well, she just makes these charges on the payroll sheet with the total deductions there that I have listed on here.

Q. And then on the basis of those sheets, are those amounts deducted from the employees' salaries?

A. Yes.

Q. On what days of the month do you turn over these sheets to the payroll clerk?

A. Generally on the 16th or the day following the 15th, in the [299] middle of the month, and also the last day of the month, which would be the first of the succeeding month.

Q. Then do you receive money from the payroll clerk?

A. Yes, she gives me a check for the total of all deductions she makes.

Q. The total amount of all those deductions?

A. Yes.

Q. And what do you use that money for?

A. Well, we use that money to pay the laundry bill, pay the bottling companies, and cigarette companies here that furnishes us with things here that we use out there.

(Testimony of P. W. Carlson.)

Q. There is a profit from the laundry and the cigarette and the coke machines, is there?

A. Yes.

Q. Then will there normally be a surplus each time after you have paid off these bills?

A. Yes.

Q. And what is done with that?

A. That surplus is run into the Welfare Fund.

Q. What is the Welfare Fund?

A. The Welfare Fund is used for—well, to create better feeling among the employees through putting on recreational activities.

Q. Does it have any specific uses or is it a question for the employees to vote on? [300]

A. It is a question for the employees to vote on, what they want to do with the surplus.

Q. All the profits that you make go into that fund?

A. Yes.

Q. What do you do with the dues?

A. All the amounts that are collected from dues are run into the Benefit Fund.

Q. What is the Benefit Fund used for?

A. The Benefit Fund is used for to pay benefits to employees that have been laid off due to sicknesses or in case of death, they receive some death benefits,—their beneficiaries receive them.

Q. What are the benefits which are paid? What will the workers receive in case of sickness, or in case of death?

A. In case of sickness where they are not in the

(Testimony of P. W. Carlson.)

hospital, they get \$3 a day after a waiting period of 3 days up to a maximum of \$49, and if they are in the hospital due to sickness or accident or illness, they get \$3.50 per day after the first—well, that starts right from the beginning; they don't have any waiting period on that. [301]

Q. (Mr. Penfield): You testified that on the 15th, the deductions are made for dues, and would this list of July 1 to July 15 show all of the employees who are members of the Idaho Refining Company Employees Benefit & Labor Association?

A. Yes.

Q. Could you also ascertain whether there were any employees, or what employees, were not members of the Association?

A. Yes.

Q. And how could you ascertain that?

A. Well, if they are not a member of the Association on the line opposite their dues, there isn't any amount put in there. It is just left blank. No dues are charged.

Q. So that in each instance where dues had been charged, that would indicate that that particular person is a member of the Association?

A. Yes.

Q. I call your attention to Board's Exhibit 13 for identifica- [302] tion the first few pages, and ask you if those pages show that employees of the Western Gateway Storage are members of the Association?

A. Yes, they are.

(Testimony of P. W. Carlson.)

Q. Is one of those employees C. E. Henninger?

A. Yes.

Q. Who is Mr. Henninger?

A. He is the dock foreman.

Q. Do these records also show that employees of the Idaho Gas & Oil Company are members of the Association?

A. Yes.

Q. Do they also show that employees of the Covey Gas & Oil Company are members of the Association?

A. Yes.

Q. On page 2 of Board's Exhibit 13 for identification, there is also a list of employees. Does this list show whether or not Kermit Rice is a member of the Association?

A. Yes, it does.

Trial Examiner Riemer: What is the date of that?

Mr. Penfield: This is July 1 to July 15, 1942. This should be marked for identification as Board's Exhibit next in order.

(Whereupon the documents hereinabove referred to were marked as Board's Exhibit 14A, 14B and 14C for identification.) [303]

Q. (Mr. Penfield, continuing) Who is Mr. Kermit Rice?

A. Why, he is the head of the garage out there. I don't know what his official title is.

Q. Does this list show Mr. E. V. Smith is a members of the Association? A. Yes.

(Testimony of P. W. Carlson.)

Q. Who is Mr. E. V. Smith?

A. He is now the plant superintendent.

Q. Does it show that Mr. W. A. Sheppard is a member of the Association?

Mr. Moyle: I think that the record itself would show as the best evidence. He has explained the manner in which it can be determined from the list itself.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record. For the purpose of expediting the proceedings, the Examiner declares a ten-minute recess so counsel can look over some documents of the Association.

(Whereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield) Does it show that Mr. H. B. Sheets is a member of the Association?

Trial Examiner Riemer: Let the witness answer the previous [304] question about Sheppard.

The Witness: He is not a member, no.

Q. (Mr. Penfield, continuing) Who is H. B. Sheets?

A. He is an employee out at the refinery. I don't know what his official capacity is there.

Q. Does the record show him as a member?

A. Yes.

(Testimony of P. W. Carlson.)

Q. Who is A. V. Simpson?

Trial Examiner Riemer: There is no point in asking "Who is H. B. Sheets". Is he a member of the Association?

Mr. Penfield: I asked him and he couldn't identify him. We will have to identify him somewhere else.

Q. (Mr. Penfield, continuing) Who is A. V. Simpson, if you know?

A. Yes, I know who he is. He is some foreman out there at the plant.

Q. Who is B. J. Albertson?

A. He is now the treasurer of the Idaho Refining Company.

Q. Was he treasurer during this period?

A. Yes.

Q. Does your record show that he was a member?

A. Yes.

Q. Who is F. L. Farnsworth?

A. He is a chemist.

Q. Does this sheet show that he was a member?

[305]

A. Yes.

Trial Examiner Riemer: Excuse me, Mr. Penfield. Before you go any further, you are examining the witness on the period of July 1 to July 15, 1942, which is Board's Exhibit 14A, B and C.

Mr. Penfield: Yes, I thought of introducing them together. Perhaps I should introduce them now.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: I wish that you would.

Mr. Merrill: We object to the introduction on the ground that they are wholly immaterial for any purpose because they contain information or names of individuals at a date long after the alleged happening of anything in the complaint, and even after the filing of the complaint.

Trial Examiner Riemer: I will reserve my ruling for the time being on Board's Exhibit 14A, B and C for identification.

Mr. Penfield: I offer this as Board's Exhibit next in order.

Trial Examiner Riemer: What are you offering?

Mr. Penfield: I am offering this list entitled "Idaho Refining Company Employees Benefit & Labor Association Payroll Deductions July 1 to July 15, 1942".

Trial Examiner Riemer: That is Board's Exhibit 14. I have reserved ruling on that for the time being.

Mr. Penfield: I would like to have this marked for identification.

(Whereupon the document hereinabove [306] referred to was marked as Board's Exhibit 15A, B and C for identification.)

Q. (Mr. Penfield.) I show you what has been marked for identification as Board's Exhibit 15A, B and C and ask you what it is.

A. It is a list of employees with their payroll

(Testimony of P. W. Carlson.)

deductions for the period of October 1 to October 15, 1941.

Q. And is that list prepared in a similar fashion to Board's Exhibit 14?

A. By all indications, it is.

Q. Is that a list from the official records of the Association which were in your custody?

A. Yes.

Q. Does this list differ in any way from the other list?

A. There might have been—

Mr. Moyle: The list speaks for itself.

Mr. Penfield: I want the record to show on this list that there was a column headed "candy" and there was no such column on the other list.

Mr. Moyle: Is that important?

Mr. Penfield: It isn't a question of whether or not it is important. I want the record to be clear.

Q. (Mr. Penfield, continuing) How does it happen that there is an item "candy" on this one, and not on Board's 14 for identification? [307]

Mr. Merrill: We object to that on the ground that it would be a pure conclusion of the witness. He has already testified that he didn't become associated with this office until February, 1942 and this has to do with 1941.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) Does the name F. L. Copenig appear on this list?

A. Yes.

Q. Who is Mr. Copenig?

(Testimony of P. W. Carlson.)

A. At the time of this report—I wouldn't say at the time of this report, either,—but when I first became employed he was the secretary of the Idaho Refining Company. He is now in the Army.

Q. Does this list show that he is a member?

A. He was a member at that time, according to that.

Q. Who is G. L. Farnsworth?

Trial Examiner Riemer: Isn't that F. L. Farnsworth?

Mr. Penfield: It is either a G or a C, on here.

A. He is a chemist.

Q. Does this list show Kermit Rice was a member? A. Yes.

Q. Does it show that A. V. Simpson was a member?

Mr. Merrill: We object to the form of that question on the ground that it calls for a conclusion of the witness. The most that the witness can say is to read the list which has [308] been offered in evidence, and that the name appears thereon.

Trial Examiner Riemer: Sustained. Does it show a deduction for Association dues, put it that way.

Mr. Penfield: I think, Mr. Examiner, that my chief purpose in naming these persons at this time was merely to show their position, and in view of the fact that in many instances they are the same as with respect to Board's Exhibit 14 for identification, there is no point in going through this.

(Testimony of P. W. Carlson.)

Trial Examiner Riemer: All right.

Q. (Mr. Penfield, continuing) Does this list show that employees of the Western Gateway Storage were members of the Association?

A. Yes.

Q. Does it show that the employees of the Idaho Gas & Oil Company were members of the Association?

A. Yes.

Q. Does it show that employees of Covey Gas & Oil Company were members of the Association?

A. Yes.

Mr. Penfield: I offer this in evidence as Board's Exhibit 15.

Trial Examiner Riemer: Has the respondent a position with respect to this?

Mr. Moyle. We have no objection.

Trial Examiner Riemer: With respect to Board's Exhibit 14, [309] are you renewing your objection to that?

Mr. Moyle: Yes, your Honor.

Trial Examiner Riemer: May I see the pleadings, please?

The objection to Board's Exhibit 14 is sustained. Board's Exhibit 15 may be admitted in evidence.

Mr. Penfield: Mr. Examiner, I submit that that is properly——

Mr. Moyle: May I interrupt to inquire if it is permissible to argue with the Examiner's rulings after the ruling?

Trial Examiner Riemer: It just depends on the

(Testimony of P. W. Carlson.)

decision of the Examiner. Sometimes attorneys don't like the rulings. It is perfectly apparent why I ruled as I have. The complaint is dated June 24, and the proposed exhibit is dated July 1. I think that we can go on now with the hearing.

Mr. Penfield: I would like to have this document marked for identification.

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 16A, B and C for identification.)

(Whereupon the document heretofore marked Board's Exhibit 14 ABC for identification was refused.)

(Whereupon the document heretofore marked Board's Exhibit 15A, B and C for identification was received in evidence.)

BOARD'S EXHIBIT No. 15-A

IDAHO REFINING COMPANY

EMPLOYEES BENEFIT AND LABOR ASSOC.

PAYROLL DEDUCTIONS

Period of Oct. 1 to Oct. 15, 1941

	Dues	Candy	Cokes	Laundry	Total
Anderson, John	.50		1.55		2.05
Archibald, Leo	.50				.50
Ayres, James	.50			.25	.75
Brower, K. C.	.50				.50
Baldwin, V. A.	.50		.70		1.20
Bailey, Harold	.50	4.50	.70		5.10
Burkholder, Pat	.50		.25		.17
Berrett, Reed	.50				.50

(Testimony of P. W. Carlson.)

Payroll Deductions—Period of Oct. 1 to Oct. 15, 1941—(Cont'd)

	Dues	Candy	Cokes	Laundry	Total
Brown, E. K.	.50			.80	1.30
Campbell, Guy	1.00				1.00
Christman, C. R.	.50			.90	1.40
Chambers, Reynold B.	-0-				-0-
Campbell, W. D.	.50		.25	1.00	1.75
Cornia, Boyd	.50				.50
Copening, F. L.	.50		.30		.80
Davis, Howard	1.00				1.00
Dern, Fred	.50		1.00	1.40	2.90
Devereaux, U.	.50		.10	.40	1.00
Dixon, Gwen	1.00	.10			1.10
Downey, James	.50				*.50
Duncan, Haskell	.50			.50	1.00
Ebersole, Earl	-0-				-0-
Ellingford, Victor	.50			.25	.75
Evans, John	.50				.50
Farnsworth, G. L.	.50				.50
Fowler, Leonard	.50		.45		.95
Greserson, Chris R.	1.00				1.00
Grimmett, Ed	.50				.50
Hammond, Jerry	-0-				-0-
Hancock, Elijah	.50			.17	1.25
Hanson, Clarence	.50	.10	1.00	.40	2.00
Heckert, Arthur	.50				.50
Hendricksen, H. H.	.50		.80	1.50	2.80
Hill, Carl	.50				.50
Holder, Vaughn	.50				.50
Horrell, Dana W.	.50			1.87	*2.37
Jackson, Laron	.50		.30		.80
McIntier, Morgan	-0-				-0-
McMillan, Al	1.00				*1.00
McMillan, Wm.	.50				.50
Merrill, Stanley	.50		.85	3.05	4.40
Mick, A. H.	.50		.30		.80
Miller, A. H.	.50				.50
	24.00	4.70	8.55	11.20	1.87 48.32

* Figures in circle.

(Testimony of P. W. Carlson.)

BOARD'S EXHIBIT No. 15-B

	22.00				
	Dues	Candy	Cokes	Laundry	Total
Miller, R. E.	.50				.50
Miller, W. M.	.50	.15	.70		1.35
Mills, Kay	.50		.20	.50	1.20
Miner, S. R.	.50		2.85	1.65	5.00
Moyle, Bob	.50		1.55		2.05
Norton, Wilmer	.50	.20	1.55	.50	2.75
Patterson, Bob	.50				.50
Pearson, Vess	.50	.30	1.60		2.40
Peters, Delmar	.50	.05	.65	.60	1.80
Peterson, John H.	.50		.35		.85
Pope, Max	.50		.55		1.05
Primbs, Valerie	.50	.10			.60
Parker, N. W.	.50		1.85	.35	2.70
Ray, John	1.00				1.00
Rice, Kermit	.50				.50
Rogers, Marlaine	-0-				-0-
Sequine, Harley	.50				*.50
Sherman, Francis	.50		1.00	.90	2.40
Shreve, A. R.	.50			1.85	2.35
Simpson, A. V.	.50		1.40	.75	2.65
Smith, E. V.	.50		1.50	.80	2.80
Sorenson, Allen	-0-				-0-
Sorenson, Rupert	.50		.90	.50	1.90
Stanger, P. P.	.50			.40	.90
Stewart, Cleone	1.00		.10		1.10
Smith, P. G.	.50	.40	.20		1.10
Wagstaff, Radford	.50	.20			.70
Wells, Norman	1.00		.60	.80	2.40
Whitesides, M. D.	.50			4.50	5.00
Williams, Waldon	.50	.25	3.65	2.25	6.65
Wright, Harold	.50		.60	.70	1.80
Yancey, Edythe	-0-				-0-
P. W. Carlson	1.00	.10			1.10
Wayne Douglas	.50		.15		*.65
Oran Thomas	1.00		.70		1.70
Wayne Nord	1.00		.75	.80	2.25
Martha White		.10			.10

* Figures in circle.

(Testimony of P. W. Carlson.)

Payroll Deductions—Period of Oct. 1 to Oct. 15, 1941—(Cont'd)

	Dues	Candy	Cokes	Laundry	Total
Bernice Carl		.05			.05
Sophie Jordan		.05			.05
C. H. Bergman			.15		.15
Glenn Hamilton			.10	.40	.50
J. K. Jensen			.35	.25	.60
Leland Stanford			.10		.10
	<u>41.50</u>	<u>6.65</u>	<u>32.35</u>	<u>29.70</u>	<u>112.00</u>
				29.7	1.87

* Figures in circle.

BOARD'S EXHIBIT No. 15-C

42.00

	Dues	Candy	Cokes	Laundry	Total
Western Gateway Storage					
Chastain, James	.50				.50
Collins, A. W.	.50		.55	.40	1.45
Fricke, Jerry	.50		1.50		2.00
Hall, George J.	.50	.50			1.00
Henninger, C. E.	.50		.80		1.30
Mills, Howard	.50		1.95	.80	3.25
Porter, Earl	0			2.10	2.10
Sheets, H. B.	.50	.15	.50		1.15
	3.50	.65	5.30	3.30	12.75
Idaho Gas & Oil Company					
Robson, Delbert	.50				.50
Thompson, Harvey	.50				.50
	1.00				100
Covey Gas & Oil Co.					
Jones, H. C.	.50				.50
Jones, Joe	.50				.50
Johnston, Virginia	.50				.50
Porter, Leah	.50				.50
Smith, Orla Mae	1.00	.05			1.05
	<u>3.00</u>				<u>3.05</u>
				1.87	
	49.00	7.35	37.65	33.00	128.87

[Figures in circle] : 39.25

(Testimony of P. W. Carlson.)

Q. (Mr. Penfield, continuing) I show you Board's Exhibit 16A, B and C for identification, and ask you if you will tell us what it is? [310]

A. This is a list of the employees of the Idaho Refining Company, Western Gateway Storage Company, Idaho Gas & Oil Company, Covey Gas & Oil Company, Payroll Deductions for the Period June 1 to June 15, 1942, including deductions for dues, cigarettes, cokes and laundry.

Q. Is it prepared in identically the same manner as Board's Exhibit 14 for identification?

A. Yes.

Q. Is it also part of the official records of the Association? A. Yes.

Mr. Penfield: I offer this in evidence.

Trial Examiner Riemer: The Board has offered Exhibit 16A, B and C for identification.

Mr. Merrill: We object to it on the grounds that it is incompetent, and pertains to matters happening after the allegations in the complaint with reference to this matter, and is immaterial for any purpose.

Mr. Penfield: Well, I don't think that I am wrong on the time of the complaint. This happens to contain periods before the issuance of the complaint.

Trial Examiner Riemer: The objection is overruled. It may be admitted and marked in evidence as Board's Exhibit 16A to C, inclusive.

(Whereupon the document heretofore marked as Board's Exhibit 16-A, B and C, for identification, was received in evidence.) [311]

(Testimony of P. W. Carlson.)

BOARD'S EXHIBIT No. 16-A

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—
PAYROLL DEDUCTIONS

Period from June 1st to June 5, 1942

Name	Dues	Cig.	Cokes	Laundry	Total
Western Gateway Storage Employees					
Collins, A. Warren	.50	1.30	1.05	1.05	3.90
Gregor, Richard C.	.50	2.03	1.80		4.33
Fricke, Harold	.50		.40		.90
Hall, Geo. J.	.50	1.96	4.20		6.66
Hemninger, C. E.	.50		.75		1.25
Jensen, J. K.	.50	.86	1.25		2.61
Morris, Jack D.	.50		1.25	.85	2.60
Porter, Earl B.	.50	.99	.45		1.94
Pope, Lester, D.	.50	1.45	1.70		3.65
	<u>4.50</u>	<u>8.59</u>	<u>12.85</u>	<u>1.90</u>	<u>27.84</u>

Idaho Gas and Oil Company Employees

Harvey Thompson	.50				.50
-----------------	-----	--	--	--	-----

Covey Gas and Oil Company Employees

Jones, H. C.	.50	.56			1.06
Porter Leah	.50				.50
	<u>1.00</u>	<u>.56</u>	<u>—</u>	<u>—</u>	<u>1.56</u>

Summary:

Cash Received:		Dues	41.50
Idaho Refining Co.		Cig.	60.18
(B J. 50c)	156.63	Coke	71.10
Western Gateway	27.84	Laundry	44.25
Idaho Gas	.50	a/c Rec	7.83
Coveys	3.29		
Cash Sales			
	<u>218.26</u>		<u>224.86</u>

(Testimony of P. W. Carlson.)

Accounts Receivable:

George E. Howell .50

Forward 6.10

 224.86

BOARD'S EXHIBIT No. 16-B

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—

PAYROLL DEDUCTIONS

Period from June 1st to June 15, 1942

Name	Dues	Cig.	Cokes	Laundry	Total
Moss, Samuel P. Jr.	.50				.50
McNurlen, C. E.	.50	1.30			1.80
McMullin, Daryl J.	.50	1.30			1.80
McMillan, Wm.	.50				.50
Newman, Kirby	.50	.73		1.45	2.68
Oliver, James	.50			.65	1.65
Pope, Max	.50	.15	1.00	2.00	3.65
Peters, Delmer	.50	.75	1.15	.50	2.90
Pearson, Vess	.50	.25	2.55		3.30
Primbs, Valerie	.50		.60		1.10
Parson, L.M.					
Rice, Kermit	.50				.50
Roberts, Jr. Fred					
Rotering, Ann Marie					
Smith, E. V.	.50	.88	1.20		2.58
Smith, P. G.	.50	1.98	.45		2.90
Sheppard, W. A.					
Sheets, H. B.	.50	1.58	.35	1.10	3.53
Simpson, A. V.	.50	1.45	2.50	.95	5.40
Sherman, Francis	.50			.25	.75
Shreve, A. R.	.50	2.14	1.65	1.85	6.14
Sorenson, Rupert, A.	.50		5.50	2.35	8.35
Smart, Earl	.50			.40	.90
Schindele, Louis	.50		.75		1.25

(Testimony of P. W. Carlson.)

Period from June 1st to June 15, 1942—(Continued)

Name	Dues	Cig.	Cokes	Laundry	Total
Stewart, Cleone	.50	3.31	.10	2.75	6.66
Spraker, William E.	.50				.50
Summers, Ernest	.50	.28		5.30	6.08
Thomsen, J. A.	.50				.50
Thomas, Freeman			.15		.15
Thomas, Oran	.50	2.60		1.60	4.70
Williams, Waldon	.50	1.61	4.30	.85	7.26
Wright, Harold	.50		1.70	.25	2.45
Whitesides, M. D.		1.29	1.00	2.80	5.09
Warnick, Jesse Ralph	.50				.50
Westergard, William E.					
Vaughn, Harold S.					
Werrick, Devon					
VanVoorhis, Laurence C.	.50			.85	1.35
	<hr/>	<hr/>	<hr/>	<hr/>	<hr/>
	35.50				188.13
	36.55	51.03	58.25	42.35	187.13

188.13

BOARD'S EXHIBIT No. 16-C

IDAHO REFINING COMPANY

POCATELLO, IDAHO

EMPLOYEE BENEFIT AND LABOR ASSOCIATION—

PAYROLL DEDUCTION

	From	to	1942		
Name	Dues	Cig.	Cokes	Laundry	Total
Anderson, John	.50	4.33	8.40	.40	13.63
Albertson, B. J.	.50				.50
Baldwin, V. A.	.50	.15	.45		1.10
Bailey, Harold	.50	.84	.30	.60	2.24
Bergman, Clarence	.50	7.60	.10	.80	4.00
Brown, E. H.	.50			1.60	2.10
Baum, Clark	1.00				1.00
Cozad, I. R.	1.00	3.90			4.90

(Testimony of P. W. Carlson.)

Name	Dues	Cig.	Cokes	Laundry	Total
Campbell, W. D.	.50		.60	.15	1.35
Cunningham, Chas.	.50	.75	.60		3.85
Carlson, P. W.			.25		.25
Carter, Bernice			.20		.20
Copening Jr. F. L.	.50	.15			.65
Chastain James D.	.50	1.14	.55	.85	3.14
Comstock, George	.50				.50
Devereaux Ulyses	.50	.15	4.00	.45	5.10
Duncan, Haskel	.50				.50
Dehlin, Alden Leroy	1.00				1.00
Durant, Charles, C.	.50				.50
1st	.50				.50
Dixon, Gwen	.50		.55		1.05
Farnsworth, G. L.	.50				.50
Grant, A. W.		.28			.28
Grimmett, G. E.	.50		.10		.60
Howell, George E.	.50				.50
Hancock, Elijah	.50	.45		.25	1.20
Hanson, C. E.	.50	1.45	1.40	.65	4.00
Holder, Vaughn	.50	1.68	3.10	.45	5.73
Hincley, Albert	1.00		3.00		4.00
Hincley, Dale	1.00	1.31	1.15	.75	4.21
Howard, W. L.	.50				.50
Ingalls, Frank					
Charles 1st	1.00				1.00
Johnston, Kenneth L.					
Jackson, Loran	.50	.43	.80	.25	1.98
Leigh, Garrett W.	.50	3.90			4.40
Jewkes, Kaye Edward	.50				.50
Miller, A. H.	.50				.50
Mills, Kay	.50	.14	[Illegible]	1.10	3.39
Miner, S. R.	.50	1.43	3.90	1.20	7.03
Mick, A. H.	.50		.65		1.15
Moyle, R. L.	.50	1.65	2.15	6.45	10.75
Moyle, Gilbert, D.					
Miller, R. E.	.50				.50
Holmes, E. B.				.40	.40
		29.43	23.30	16.45	

(Testimony of P. W. Carlson.)

Mr. Penfield: I would like to make the statement for the record to the effect that these two exhibits, 14 and 16 were taken from the——

Mr. Merrill: You mean 15 and 16. 14 was not admitted.

Trial Examiner Riemer: 15 and 16.

Mr. Penfield: 15 and 16 were taken from the official records of the Company to avoid putting in all of them.

Trial Examiner Riemer: All right, thank you.

[312]

(Whereupon Board's Exhibit 17A, C and D previously marked for identification were withdrawn, and the document heretofore marked as Board's Exhibit 17B for identification, was received in evidence.) [315]

BOARD'S EXHIBIT NO. 17-B

Idaho Refining Company—Employees' Benefit
Association

Annual Meeting—February 13, 1942

8:00 P. M.

Meeting called to order at 8:00. The following members were present: Del Peters, Earl Porter, Max Pope, Ray Shreve, Bob Moyle, E. V. Smith, A. H. Miller, Lester Pope, H. Bailey, Vic Simpson, U. Devereaux, F. Sherman, A. H. Mick, Jim Chastain, Kay Mills, C. E. Henninger, H. Sheets, Lee Farnsworth, L. Jackson, C. Murrar, K. C. Brower, and Reid Miner.

(Testimony of P. W. Carlson.)

Election for new officers was held with the following offices being filled by the following men:

President—Del Peters, unanimously elected.

Vice President—A. H. Mick, unanimously elected.

Secretary and Treasurer—P. W. Carlson, unanimously elected.

Grievance Committee—James Chastain, Chairman

E. H. Brown

U. Devereaux

Social & Welfare Committee—W. D. Campbell, Chairman

K. C. Brower

Harvey Thompson

Auditing Committee—Max Pope, Chairman

H. Sheets, unanimously elected

Safety Committee—Tom Collins

H. Duncan, Chairman

Motion was made by members that the Board of Directors be empowered to change the By-Laws to read as follows: That Hospital Benefits be paid at the rate of three dollars and fifty cents (\$3.50) per day with a maximum of forty-nine dollars (\$49.00) in any one calendar year. Motion was carried.

Meeting was adjourned at 9:45 P. M.

EARL B. PORTER,

Secy.

(Testimony of P. W. Carlson.)

Q. Now, Mr. Carlson, as a matter of fact, only the totals of the deductions shown on Exhibits 15 and 16 were given to the Refining Company, I believe—the totals for deductions from the payroll—is that the fact?

A. Well, that was the only thing that was of interest to them. Of course, as I submitted the entire record, the others would be segregated, but the totals are the only thing that they were interested in.

Q. They were merely deducted from the employees' check? A. Yes.

Q. That was due to the written request of the employee at the time? A. Yes.

Q. Now, I beleive that you said that these deductions aside from dues were for candy and Coca Cola and matters purchased through the vending machine from which the Association received any profit, if there was any? A. Yes.

Q. And that idea was initiated as a matter of fact, by the Association? A. Yes.

Q. The Refining Company had absolutely nothing to do with that, one way or the other, did it?

A. No, not to my knowledge.

Q. The members initiated that movement for their own conven- [318] ience. A. Yes.

Q. And the profits, if there were any, you say, went into the benefit fund? A. Yes.

Q. And from that benefit fund, the members received various payments if they became sick or in the hospital or anything of that sort, is that correct?

(Testimony of P. W. Carlson.)

A. Well, that was received from the benefit fund, yes.

Q. And that was from the profits, if there were any, from the vending of these articles?

A. No, the benefit fund consists only of the dues.

Q. I see. Then what fund would these items go into, these profits go into?

A. The Welfare Fund.

Q. What was that used for?

A. It was used for recreation activities among employees, to foster fellowship and good will. [319]

Redirect Examination

By Mr. Penfield:

Q. Did I understand you to say, Mr. Carlson, that you only gave the company the totals that would appear on those deductions as shown on Board's Exhibits 15 and 16?

A. I gave them the entire records there, but they were only interested in the totals.

Q. You gave them the totals that appear in the right-hand corner of those exhibits?

A. Yes, the total of all deductions for various things.

Q. And they make deductions from the individual employees on the basis of those totals?

A. Just the totals, yes.

Mr. Penfield: That is all.

Recross Examination

By Mr. Merrill:

Q. You prepared and submitted it that way as a matter of your own convenience? A. Yes.

(Testimony of P. W. Carlson.)

Q. It wasn't because of any desire or order of the company?

A. No, that was for the Association's own records there to find out whether we make any profits from the pop, or how much.

Q. If you had just submitted the totals to the company, that is all they——

A. That is all they would be interested in.

Q. That is all that they would be interested in in any way? [322]

A. That's right.

Mr. Merrill: That is all.

Mr. Penfield: I wasn't quite through.

Redirect Examination

By Mr. Penfield:

Q. In fact, you submit those sheets such as Board's Exhibits 15 and 16, is that correct?

A. Yes.

Q. Did I understand you to testify that the Association had been authorized in writing to make these deductions, that is the individual members of the Association had authorized the company in writing to make the deductions?

A. Yes, we have a written form there, whereby they sign it.

Mr. Penfield: Will you mark this Board's Exhibit 18 for identification?

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 18 for identification.)

Q. (Mr. Penfield, continuing): I show you

(Testimony of P. W. Carlson.)

what has been marked as Board's Exhibit 18 for identification, which has the title "Application for Membership in Idaho Refining Company Employees Benefit & Labor Association", and ask you to tell me what that contains?

A. It is an application for membership in the Idaho Refining Company Employees Benefit & Labor Association. It is a form that every one of the members, in applying for membership, or employees applying for membership signs before they are approved [323] by the board.

Q. Now, does the entire Board's Exhibit 18 consist of signed applications?

A. Well, there are some blanks in there.

Q. Would those be used for the purpose of signing up new members? A. Yes.

Q. And these are part of the official records, are they? A. Yes.

Q. I call your attention to,—well, I will read the entire title, "Application for membership in Idaho Refining Company Benefit & Labor Association, I, the undersigned, do hereby apply for membership in the Idaho Refining Company Employees Benefit & Labor Association, and if accepted, do agree to abide by all the rules and regulations of this Association whatever, and I also do authorize the paymaster of the Idaho Refining Company to deduct each month the money, dues and fines charged me by the Association, and in the event of my death, I designate as my beneficiary—" and then a place for the member's automobile license,

(Testimony of P. W. Carlson.)

and "Approved". I ask you if that is the only written authorization which members of the Association give to the company?

A. That the employee gives to the Association?

Q. Yes, "I hereby authorize the paymaster to deduct each month"? [324]

A. Yes, that is the only signed agreement that they have.

Q. Is there any other authorization with respect to the laundry and the cigarettes and the candy?

A. No, that is understood that it is to be handled in that manner. I believe that that is in the minutes.

Q. But that is the only—in what minutes?

A. In the minutes of the Board.

I think that the time they decided, or the time that this was made up, I don't believe that they had any vending machine.

Q. Then any authorization that is given by the members of the Association to the Company with respect to these other items would not be written, is that correct?

A. There is no signed agreement.

Q. When a member signs one of these applications, do you take any action with respect to that member in the way of noting an entry in the books or anything of that sort?

A. At the time that he signs that agreement, it is presented at the meeting of the Board, at the next meeting, and then each member is voted upon. Some

(Testimony of P. W. Carlson.)

of them are approved as members and others are rejected.

Q. Do you take any action with respect to that member's securing gasoline deductions at the Covey station?

A. No, I don't have anything to do with that part of it. That is handled through the Covey office.

Q. You don't call the Covey station? [325]

A. I call the Covey station at the time they sign an agreement, and give the Covey Service Station Attendant the name of the individual, and also the license number.

Q. Do I understand you to say that you call him at the time that particular individual signs one of these applications? A. Yes.

Q. When do you present these lists, such as we have in Board's Exhibits 15 and 16?

A. That is the list of deductions?

Q. Yes.

Mr. Moyle: I object to this as repetition.

Trial Examiner Riemer: Sustained.

Mr. Penfield: That is all.

Recross Examination

By Mr. Merrill:

Q. Mr. Carlson, the signed agreement to which you have testified, and which was read to you by counsel, is not delivered to the refining company, is it?

(Testimony of P. W. Carlson.)

A. No, it is a permanent record of the Association.

Q. Yes. Now, the refining company makes the deductions upon that list which you present, whether they are members of the Association, or whether they are not, don't they? A. Yes.

Q. And I call your attention to Exhibit 16 to illustrate, and particularly to Exhibit 16B, I note the name of M. D. Whitesides, and under the column "dues", there is a blank line [326] or a line drawn. What does that indicate?

A. That he is not a member of the Association.

Q. Now, I call your attention to the title "Cigarettes, \$1.29" and under the title "Cokes, \$1.00", and under the title "Laundry, \$2.80," making a total of \$5.09. What does that indicate?

A. That means that is the amount to be deducted by the payroll clerk from his check.

Q. So there we have an individual who is not a member of the Association at all, who pays no dues, but whose purchases from the Association are deducted from his payroll check and paid to the Association? A. Yes.

Q. Is that the case wherever you see the blank line drawn under the word "dues"? That they are not members of the Association? A. Yes.

Q. You know several instances, do you not, where individuals not members of the Association are thus permitted to purchase there and that the amount is charged to their payroll check?

(Testimony of P. W. Carlson.)

A. Yes.

Q. With respect to the laundry, that is an arrangement, is it not, between the Association and the laundry company? A. Yes.

Q. And the laundry company—the National Laundry Company, is [327] it not? A. Yes.

Q. Gives to the Association a discount for that business? A. Yes.

Q. And the Idaho Refining Company has absolutely nothing whatever to do with that?

A. No, they don't have anything to do with that at all.

Q. With the Covey Gas & Oil Company, you call up for any employee on that, don't you?

A. Well, I happen to only for the members that I need to call up for. However, I do not know just how it is handled by the company in that respect.

Q. That is, you say you don't know what the company does with individuals who receive discounts for gasoline who are not members of the Association, is that what you mean?

A. Yes.

Q. You only do that with reference to members of the Association? A. Yes.

Q. And that there are individuals who are not members of your association who get this same privilege of discount on gasoline?

A. I am under that understanding.

Q. That is your understanding?

A. Yes, sir.

(Testimony of P. W. Carlson.)

Q. When you do this calling on behalf of the members of the Association, is it on company time?

[328]

A. It is on company time due to the fact that I call at the time that they sign the application.

Q. I see. To make a record? A. Yes.

Q. And you do make a record of it?

A. Yes.

Mr. Merrill: I think that is all.

Redirect Examination

By Mr. Penfield:

Q. Are these cards signed on company time, these application blanks? A. Yes.

Mr. Penfield: That is all.

Q. (Trial Examiner Riemer): Mr. Carlson, does the Association have a constitution as distinguished from the by-laws? A. I do not know.

Q. You don't have it?

A. I don't have it. I haven't seen it.

Mr. Penfield: I would like the record to show that we subpoenaed the constitution among other things and that was also not forthcoming.

Trial Examiner Riemer: You are excused, Mr. Carlson. Thank you very much.

(Witness excused.)

Mr. Penfield: I will call Mr. Archibald.

LEO ARCHIBALD

[329]

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name for the record.

The Witness: Leo Archibald.

Trial Examiner Riemer: Where do you live?

The Witness: 556 Jefferson, Pocatello.

Direct Examination

By Mr. Penfield:

Q. Where are you employed?

A. At the present time?

Q. Yes.

A. For the Union Pacific Railway.

Q. In what capacity? A. As a welder.

Q. Were you ever employed by the Idaho Refining Company? A. Yes.

Q. At what time, and in what capacity?

A. Well, I started for them on January 25, 1941, as a welder, and mechanic,—truck mechanic.

Q. What were your duties?

A. General repair of trucks—maintenance, welding and repair of tanks—transportation tanks.

Q. Did you work exclusively with the trucks?

A. Almost exclusively, yes. [330]

Q. Did you do other work—

A. No.

Q. —aside from work on the trucks?

A. No, not besides trucks and tanks.

(Testimony of Leo Archibald.)

Q. By "tanks", what do you mean?

A. Transportation tanks used on the trucks—trailer tanks.

Q. During the time that you worked for the Idaho Refining Company, who was your foreman?

A. Kermit Rice.

Q. When did you cease working for the Idaho Refining Company?

A. November 13, 1941,—1942—or 1941.

Q. What was that date again?

A. November 14, 1941.

Q. November 14, 1941.

A. The 13th—the night of the 13th is the last day that I worked for them.

Q. On what date were you discharged?

A. The morning of the 14th.

Q. November 14? A. Yes.

Q. 1941? A. 1941.

Q. At the time that you first came to work for the Idaho Refining Company, were you a member of the International Association of Machinists, Local 198? A. No. [331]

Q. Were you a member of any labor organization affiliated with the American Federation of Labor? A. No.

Q. Did you become a member of the Idaho Refining Company Employees Benefit & Labor Association? A. Yes.

(Testimony of Leo Archibald.)

Q. When did you become a member?

A. I couldn't be sure of that date. It was probably a week or so after I went there.

Trial Examiner Riemer: Keep your voice up, please.

A. (Continuing) I am not sure of the date. Possibly a week or so after I was employed.

Q. (Mr. Penfield, continuing) During the time that you were employed by the company, did you ever apply for membership or become a member in any organization other than the Association?

A. Yes.

Q. And what was that organization?

A. Machinists Local—American Federation of Labor.

Q. Is that the International Association of Machinists, Local 198?

A. That is right.

Q. When did you sign an application to join this organization?

A. I am not sure of the exact date of signing the application I think that it was somewhere near the end of September. [332]

Q. What were the circumstances—

Mr. Moyle: What year?

The Witness: 1941.

Q. (Mr. Penfield) Was that in September, 1941?

A. That's right.

(Testimony of Leo Archibald.)

Q. What were the circumstances that led to your signing with Local 198 of the Machinists?

Mr. Moyle: We object to that as immaterial.

Trial Examiner Riemer: What is the purpose of that, Mr. Penfield?

Mr. Penfield: I merely want to place the time and the man's union activities.

Trial Examiner Riemer: Well, you have placed it in September of 1941. The objection is sustained. If you want to show the nature of his union activities after he joined, that is something else.

Q. (Mr. Penfield, continuing) Where did you sign your application?

A. At Mr. Rosqvist's home.

Q. Who is he?

A. He is, I believe, the state representative of the Federation of Labor. I think that is his official title.

Q. Who was with you?

A. There were several of the truck drivers.

Q. Were any of the truck mechanics there?

[333]

A. One.

Q. Did you all go to Mr. Rosqvist's home together?

A. Yes.

Q. Prior to going there, had you talked to any of the truck drivers about their signing with the Union?

A. Yes.

Mr. Moyle: We object to that as immaterial.

(Testimony of Leo Archibald.)

Trial Examiner Riemer: Overruled.

A. Yes, we did.

Q. (Mr. Penfield, continuing) And what did you decide?

Mr. Moyle: That is calling for a conclusion.

Mr. Penfield: All right.

Q. (Mr. Penfield, continuing) What discussion did you have?

A. Well, the discussion was that that was the only way that we could improve our working conditions out there and lay the matter before Mr. Moyle—that is the only way that we could get it before Mr. Moyle.

Mr. Moyle: We object on the grounds that it is immaterial and hearsay as far as this respondent is concerned.

Trial Examiner Riemer: The objection is overruled. Will you keep your voice up and talk as loudly as you can?

Q. (Mr. Penfield, continuing) Did you go to see Mr. Moyle?

A. I called him by telephone and made an appointment with him.

Q. Did you ever see him? [334]

A. No.

Q. (Trial Examiner Riemer) When was this?

A. Oh, I had tried for probably a month or six weeks prior to joining the union to see Mr. Moyle and talk to him.

Q. (Mr. Penfield, continuing) Did you come to

(Testimony of Leo Archibald.)

any decision from those conversations with the truck drivers?

Mr. Moyle: That would be purely self-serving. We object to it on that ground.

Trial Examiner Riemer: Overruled.

A. We concluded that the only way to contact Mr. Moyle was through the union—by joining it.

Q. (Mr. Penfield, continuing) Who arranged this meeting at Mr. Rosqvist's house?

A. Myself, and several of the truck drivers.

Q. Did you make an appointment in advance with Mr. Rosqvist?

A. We did—I did.

Q. You made the appointment by telephone?

A. That's right.

Q. What is your best recollection of the date that this meeting was scheduled?

A. I couldn't recall that exact date, but it was near the end of September.

Q. About how many persons attended this meeting?

A. There would be about seven, including myself.

Q. What did Mr. Rosqvist tell you? [335]

Mr. Moyle: We object to that as hearsay, incompetent and immaterial.

Trial Examiner Riemer: Is this to be connected up in any way?

Mr. Penfield: Yes, I am seeking to establish that they—well, I think that I can get it.

Trial Examiner Riemer: All right, I will permit

(Testimony of Leo Archibald.)

it subject to your connecting it up, and I will entertain a motion to strike if it isn't connected.

A. We talked to Mr. Rosqvist about what benefit we could derive from joining the union, and he told us that if we could get 50 per cent. of the drivers or mechanics to sign with the union, the union would represent us out there and try to give us a little better conditions,—conditions and better wages.

Q. Did he say anything about what union you should join?

A. Well, he was the representative of the Federation of Labor. Of course, I had to join 198 Local, the Machinists, because I was a mechanic, and the drivers joined the Chauffeurs and Teamsters' Union.

Q. By that, do I understand that you mean that he said that the drivers should sign with the Teamsters Union? A. That's right.

Q. Did the persons present at that meeting sign application cards? A. They did. [336]

Q. The truck drivers as well as the truck mechanics? A. That is right.

Q. Was anything said about signing up the remaining drivers?

A. Yes. I took the application blanks with me and gave them to some of the different drivers.

Q. You received the application blank from whom? A. Mr. Rosqvist.

Q. (Trial Examiner Riemer) These were application blanks from the Teamsters Union?

A. In the Teamsters Union, yes, sir.

(Testimony of Leo Archibald.)

Q. (Mr. Penfield, continuing) Did you take any applications for the Machinists Union?

A. I don't recall if I took any out at that time.

However, some of the fellows signed up in the Machinists Union.

Q. How many applications in the Teamsters did you take?

A. I don't recall the exact number.

Q. Did you distribute them to the truck drivers?

A. Yes, I did.

Q. Did they return them to you?

A. They returned them to me signed and with their dues.

Q. Had Mr. Rosqvist requested that you collect the dues? A. No, the men themselves did.

Q. But you did receive the dues?

A. I did. [337]

Q. Where did you give these truckdrivers the application cards?

A. Several different places, out in the plant, and outside of the plant, wherever I happened to meet one of them.

Q. Where did they return the cards and give you the money?

A. Sometimes at the plant and sometimes outside of the plant.

Q. What did you do with this money?

A. I turned it over to Mr. Rosqvist and received receipts for each individual.

Q. During this time, did you discuss joining the Union with any of the truckdrivers?

(Testimony of Leo Archibald.)

A. Yes, we talked of it.

Q. Where did these discussions take place?

A. Well, at various places. Sometimes in the plant, and sometimes outside of the plant—lunch hours and after work.

Q. Lunch hours at the plant? A. Yes.

[338]

Q. (Mr. Penfield) Mr. Archibald, do you know Kermit Rice?

A. Yes, he was my shop foreman.

Q. Did you have any conversation with him prior to November 14, 1941? A. Yes.

Q. When did that occur?

A. I could not be sure of the dates on that.

Q. To the best of your recollection?

A. Oh, it might be a month before, or a week prior to that.

Q. What is your best recollection, was it a month or a week?

A. Oh, probably it would be, I would say, a couple of weeks.

Q. Where did this conversation take place?

A. As I recall, just outside of the shop. We used to go out for a smoke for about five minutes, once in a while, during the day.

Q. What was said to you?

A. I don't recall how it came out, but he made the remark that Unions had never done him any good. [344]

Q. Was anything else said?

A. That was all that was said on the matter.

(Testimony of Leo Archibald.)

Q. Did you have any further conversations with Mr. Rice? A. No, no further.

Q. Was anything said during this conversation about the truck drivers?

A. No, there wasn't.

Q. Did you ever have any conversation with Mr. Rice in which anything was said about truck drivers?

A. Not that I recall, in particular.

Q. Did you work full time on November 13, 1941? A. Yes, I did.

Q. Did you come to work on November 14, 1941?

A. Yes.

Q. What occurred that morning?

A. Well, I went over to unlock my tools, and change clothes, ready to go to work, and Mr. Rice informed me that he would have to lay me off.

Q. Did you have any conversation with Mr. Rice?

A. I asked if I might inquire why.

Q. What did he say?

A. He told me that for getting drunk and laying off work.

Q. Did you say anything further to him?

A. I just laughed at him, and told him that we both knew what it was about. He offered me his truck to haul my tools [345] away.

Q. Did you get your check that morning?

A. No.

Q. What was your regular pay day?

A. On the 5th and the 20th.

(Testimony of Leo Archibald.)

Q. When did you get your check?

A. I think it was the following Monday morning, I got my check—I believe this was Friday.

Q. Did you get your termination report?

A. Yes, I got my termination report on Monday or Tuesday, I am not sure.

Mr. Penfield: I would like to have this termination report marked for identification.

(Whereupon the document hereinabove referred to was marked as Board's Exhibit 19 for identification.)

Q. (Mr. Penfield, continuing) I show you Board's Exhibit 19 for identification and ask if you can tell me what it is?

A. Yes, that is a termination report that they issued to me at my request.

Q. That is the Company did?

A. That's right.

Mr. Penfield: I offer Board's Exhibit 19 for identification in evidence.

Trial Examiner Riemer: Has the witness testified when he got that, Mr. Penfield? [346]

Mr. Penfield: I believe that he did.

The Witness: I could not be absolutely positive of that date.

Mr. Moyle: We have no objection.

Trial Examiner Riemer: May I see it, please? It may be admitted and marked in evidence as Board's Exhibit 19.

(Whereupon the document heretofore

(Testimony of Leo Archibald.)

marked as Board's Exhibit 19 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 19

Notice of Separation and Disqualification

1. Worker's Name (Last) Archibald (First) Leo (middle) 2. S.S.A. No. 518-09-2058
3. Place of Employment Idaho Refining Company, Pocatello, Idaho
4. Last Day Worked Nov. 13, 1941 5. Regular Occupation Truck Mechanic
6. Reason for Separation:
☐ Left Work Voluntarily
☒ Discharged for Misconduct in Connection With Employment
☐ Strike, Lockout or Other Labor Dispute
☐ Sickness, Injury or Other (Explain Below)
7. Explain in Detail: Irregular in reporting for work.
8. Has Worker Received Wages in Lieu of Notice?
Yes ☐ No ☒ Amount \$.....
Equal to pay From the Period From (Month) (Day)..... to (Month)..... (Day).....

I certify that the above information is true and correct. I do waive notification of the validity of any claim for benefits arising in connection with this report.

9. Employer's No. 250 2911-02830

(Testimony of Leo Archibald.)

10. Firm Name Idaho Refining Company
11. Address P. O. Box 767, Pocatello, Ida.
12. Signature John H. Peterson
13. Date Nov. 14, 1941
14. Title Treasurer

Notice to Employer

Fill out in triplicate; give yellow copy to worker, keep blue copy for your files, mail white copy to the Unemployment Compensation Division.

Notice to Worker

Take this notice to the nearest Idaho State Employment Service Office if you wish to file a claim for benefits.

State of Idaho
Unemployment Compensation Division
Industrial Accident Board
Boise, Idaho

Instructions to Worker

Take this notice immediately to the nearest Idaho State Employment Service listed below if you desire to file a claim for Unemployment Compensation Benefits. If the nearest office is inaccessible to you, send a post card to that office asking for information on the manner of filing claims. In order to receive benefits for unemployment, you must:

1. Register for work
2. File a claim for Benefits

(Testimony of Leo Archibald.)

3. Be able to work and available for work

4. Serve a waiting period of two weeks of total unemployment (a week of unemployment is a week of no work or a week of less than full-time work during which wages earned were less than the weekly benefit amount established for the individual claimant). The waiting period weeks need not be consecutive but must be wholly within a period of 91 consecutive days.

5. Have earned wages in covered employment during the base period of \$140 or more, \$78 of which must have been earned in a single quarter. Certain conditions surrounding separation from work may disqualify you for a period of from one to five weeks. You will be informed of such disqualification, if any, and be given an opportunity for a fair hearing. Among the disqualifying conditions are:

(a) Voluntarily quit without good cause in connection with your employment

(b) Discharged for misconduct in connection with your employment

(c) Failure to apply for or accept available, suitable work when offered or directed by the Employment Service or the Industrial Accident Board.

Warning

It is not necessary to employ anyone to aid you in collecting benefits. A representative in the office to which you report will explain your rights and what you must do to qualify for benefits.

Idaho Employment Service Offices are located at:

(Testimony of Leo Archibald.)

Boise	Jerome	Preston
Bonnors Ferry *	Lewiston	Rexburg ****
Burley **	Moscow	Salmon
Caldwell	Nampa ***	Sandpoint
Couer d' Alene	Orofino	St. Anthony
Grangeville	Payette	St. Maries
Idaho Falls	Pocatello	Twin Falls
		Wallace

* Branch of Sandpoint Office

** Branch of Twin Falls Office

*** Branch of Caldwell Office

**** Branch of St. Anthony Office

Mr. Moyle: I might say at this time, for the purpose of the record, that I have all the notices of separation and disqualification furnished me by the Company which Mr. Penfield asked for the first day of the hearing.

Mr. Penfield: Thank you, counsel; I would like to look those over at the first opportunity.

Q. (Mr. Penfield, continuing) During the time that you worked for the company had anyone ever criticized your work?

A. Only once. Mr. Rice thought I was taking too much time to do a certain job.

Q. When was this?

A. Oh, it was about a month or two months after I was first employed.

Q. What did you say?

(Testimony of Leo Archibald.)

A. I reminded Mr. Rice that the work was rather technical, and that it would take so much time to do a good job. [347]

Q. How many years' experience have you had as a mechanic and welder?

A. Slightly over 25 years, I believe.

Q. Did the truck drivers work regular hours?

A. No.

Mr. Penfield: I withdraw that question.

Q. (Mr. Penfield, continuing): Did the mechanics work regular hours?

A. No; regular starting time was eight o'clock. Sometimes we started earlier than that.

Q. How long a week did you work?

A. It wasn't regular. We sometimes worked 7 days a week, and tried to make it 6.

Q. Did you have any regular day off?

A. No, towards the last we tried to have every other Sunday off.

Q. Were you subject to call? A. Yes.

Q. At any time?

A. Usually at any time except over the weekend that we tried to rotate that.

Q. How often were you paid?

A. We were paid twice a month, the 5th and the 20th.

Q. Were you paid by check? A. Yes.

[348]

Mr. Penfield: I would like to have this marked for identification.

(Whereupon, a group of 17 slips of paper entitled "Employees' Statement" stapled to-

(Testimony of Leo Archibald.)

gether, were marked for identification as Board's Exhibit 20.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit 20 for identification which consists of a number of papers stapled together and ask you if you can tell me what those papers are?

A. Yes, these are the slips that I received with my semi monthly check.

Q. Did you receive these with every payroll check?

A. Yes, either this type of slip or this little detachable one.

Q. What do they show?

A. They show the amount of hours worked and the amount paid and the amount of deductions and the date.

Q. I believe that you testified that you went to work on January 20, 1941?

Trial Examiner Riemer: January 25.

A. The 25th, I think that it was.

Q. (Mr. Penfield, continuing): Do you have slips for each payroll period since that time?

A. There may be some missing here. I am not sure.

Q. I note the one on top says, "2-15-41", is that the first one that you have?

A. Yes, I believe that would be the first check. They hold [349] back five days.

Mr. Penfield: May I go off the record?

Trial Examiner Riemer: Off the record.

(Discussion off the record)

(Testimony of Leo Archibald.)

Trial Examiner Riemer: On the record.

Mr. Penfield: I offer in evidence as Board's Exhibit 20 these payroll check stubs, showing the hours that the witness worked, and the amount earned from the period of 2-15-41 to and including the period ending 11-15-1941.

Mr. Moyle: If the Examiner please, I am not familiar with this form. As far as I know, it is the first one of the kind that I have seen, but it is quite apparent that under the general heading here, "time worked", the number of days refers in each instance as the entire number of days which the check covers, and the time worked undoubtedly refers to the fact that they got 139-1/2 hours in in 15 days. Now, if it is the intention of the Board to show that he worked all 15 days, then I think that we would have some objection to it. I think that it appears on its face that that is not the fact. I want to withdraw the former statement that we made. We will have some further evidence on these.

Trial Examiner Riemer: I will reserve ruling on them until you can familiarize yourself with the exhibit.

You let me know when you have checked it. Go ahead, Mr. Penfield. The reservation of my ruling is made without [350] limitation on your right, Mr. Penfield, to proceed to examine on the basis of this proposed exhibit, or your right to cross examine on the basis of the proposed exhibit.

(Testimony of Leo Archibald.)

Q. Mr. Penfield): On the basis of these records, Mr. Archibald, have you made any computations of your average weekly employment during the period covered by these records?

A. Yes, I did.

Q. And how did you make this computation?

A. My average daily hours per day, figuring every day from the time that I went to work until I was discharged, I worked slightly less than 9-1/2 hours per day.

Q. On the basis of what?

A. On the basis of my pay checks per week.

Q. On the basis of how long a week?

A. 7 days.

Q. How did you arrive at that computation?

A. Well, it was very simple, because I kept a separate record besides these of every day, and taking the simple average of the hours for every day, it would be slightly less than 9-1/2 hours.

Q. On the basis of a 7-day week?

A. That's right, including holidays.

Q. You included holidays, too? A. Yes.

Q. During this period, in which you worked for the company, [351] did you ever miss any time because of illness? A. Yes, I did.

Q. How much time?

A. Three days—possibly four days.

Q. Were those days included in the computation that you made? A. Yes.

Q. That you just referred to?

A. That's right.

(Testimony of Leo Archibald.)

Q. Was there anything in connection with your work which brought on your illness that you referred to?

A. I did considerable welding inside of those transport tanks without a sufficient amount of air circulation to take the fumes out,—it was very bad at times.

Q. Then your answer is “yes” to my former question? A. Yes, that’s right.

Q. Did you make any suggestions leading to the correction of this situation?

A. I suggested to Mr. Rice that we buy a motor and build a blower unit to remove all the fumes as we were welding in the tanks.

Q. Was this suggestion ever acted upon?

A. No, it wasn’t while I was there.

Q. During the time that you worked for the company, did you miss any other time with exception of this time for illness when [352] you were supposed to be at work?

A. I think, included in that, I missed one day due to personal matters that I had to attend to in the city of Malad. I was held over there one day.

Q. Is that the only time?

A. That is the only time.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Mr. Moyle?

Cross Examination

Q. (Mr. Moyle): Now, as a matter of fact, Mr. Archibald—

(Testimony of Leo Archibald.)

Mr. Penfield: There was one further question.

Trial Examiner Riemer: Yes, go ahead.

Direct Examination (continued)

Q. (Mr. Penfield, continuing): I would like to have this marked for identification.

(Whereupon a membership card in Local 198 of the Machinists was marked for identification as Board's Exhibit 21.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit 21 for identification and ask you if you can tell me what it is?

A. Yes, that is my card showing my membership in Local 198 of the Machinists, affiliated with the American Federation of Labor, Pocatello.

Q. Does this book show when you were initiated?

A. That shows initiation on the 7th, I believe—I think that [353] it is the 7th of November. However, this was issued sometime after application and joining the Local.

Q. How much after?

A. Well, I could not be sure as to that. It would be at least two weeks.

Q. What year? A. 1941.

Q. 1941? A. Yes.

Mr. Penfield: I would rather not offer this in evidence, because it is the only copy. And I would prefer to request permission to withdraw it. I believe that it has been sufficiently identified to be the original.

(Testimony of Leo Archibald.)

Trial Examiner Riemer: Then we might as well go on. Mr. Penfield is not going to offer it. You can examine that any time.

Q. (Mr. Penfield, continuing): On what date does Board's Exhibit 21 show that you were initiated? A. It shows November 7.

Q. 1941? A. 1941.

Trial Examiner Riemer: May I see it?

Mr. Penfield: Yes. That is all.

Cross Examination (continued)

Q. (Mr. Moyle): You knew, Mr. Archibald, that Mr. Rice was a [354] union man?

A. No, I didn't, except that he told me that he had belonged to unions, and whether he did at that time, I wouldn't know.

Q. You knew that he was a charter member here in Pocatello of Machinists Local 685?

A. I knew that he had belonged to one, because he informed me of that.

Q. You knew that his name appeared in the Local Hall here on the charter?

A. No, I didn't know that.

Q. And that all the time that you worked for him, you knew that he had a retirement card from the union on account of the position he held with the refinery?

Mr. Penfield: I object to this line of questioning on the ground that it has already been testified to that Rice told him that the Union didn't do him any good. I don't think that it is relevant.

Trial Examiner Riemer: Overruled.

(Testimony of Leo Archibald.)

A. (Continuing): I didn't know what union that he had belonged to, or that he held a retirement card from any union.

Q. (Mr. Moyle, continuing): Or what his present status in the union was?

A. No, I didn't.

Q. Mr. Rice, at the time that you were employed, didn't ask you anything about your labor affiliations?

A. Not about my personal relations, no. [355]

Q. And at no time did he suggest to you what you should do in reference to your labor associations? A. No.

Q. Now, you testified with reference to your asking Mr. Rice for a blower. When was that?

A. That was brought up several different times while I worked there at the shop.

Q. And these tanks, before they were welded, were always thoroughly steamed out?

A. That's right.

Q. And when any welding was done on the inside, all of the openings of the tank were opened?

A. Yes.

Q. You were free to adjust that as best you could?

A. Yes, you could do all you could with it.

Q. You knew when you came to work for the company that the equipment which it had for the work which it had to do was more or less inadequate, did you not?

(Testimony of Leo Archibald.)

A. I didn't know anything about the set-up there until after I was working there.

Q. Well, as soon as you started to work, you found out, didn't you? A. Oh, yes.

Q. And you understood very shortly after you went to work that the financial condition of the company was such that it was not [356] able to do everything that might be done under other circumstances?

Mr. Penfield: I object to that question.

Trial Examiner Riemer: Sustained.

Mr. Moyle: We offer to prove that it was nothing but the financial inability of the company to do it that prevented it doing some of the things that it otherwise would have done.

Mr. Penfield: I don't think that is material.

Mr. Moyle: Of course, I don't think that this matter is in issue.

Trial Examiner Riemer: I don't think so, either. I don't think that the Board contends that the respondent was at fault because this man had to weld a tank in which there were gas fumes, and that that caused him any illness.

Mr. Penfield: We make no such contention.

Q. (Mr. Moyle, continuing) Now, on each of these slips in Exhibit 20,—Board's Exhibit 20—that you have furnished, under the heading "Time Worked", the number of days in each instance is the full period which the paycheck covers, is it not? A. Yes, that's right.

(Testimony of Leo Archibald.)

Q. Now, of course, taking that first paycheck, you didn't work on the 26th of January, 1941, which was a Sunday, as my calendar shows it?

A. Well, I could not be sure about that. [357]

Q. Well, there were Sundays when you did not work?

A. Yes, there were.

Q. And there were holidays when you didn't work?

A. I don't recall if I worked on holidays or not.

Q. And there were days when you were absent and didn't work?

A. That's right.

Q. But in each instance here, the number of days, or the days shown there, are the number for the full period of your pay check?

A. Your check always covers the full period whether I worked or not.

Q. When it says "time worked ... days", the days are for the full period and not the days you actually worked?

A. These are the hours I actually worked.

Q. I am asking about the days only.

A. That would not necessarily show the days.

Q. Well, it doesn't show them?

A. It covers the pay period.

Trial Examiner Riemer: In other words, it covers the pay period, and not the actual days worked?

The Witness: That is the idea. That is right.

Trial Examiner Riemer: The hours worked are shown on there.

(Testimony of Leo Archibald.)

Mr. Moyle: Yes, the hours are given, and the amount of the pay check. With that understanding, we have no objection to the introduction of Board's Exhibit 20. [358]

Trial Examiner Riemer: I might as well rule on it at this time, then. Board's Exhibit 20 now marked for identification, may be admitted and marked in evidence as Board's Exhibit 20.

(Whereupon the exhibit previously marked Board's Exhibit 20 for identification, was received in evidence.)

(Testimony of Leo Archibald.)

BOARD'S EXHIBIT No. 20

LEO ARCHIBALD

Period Ending	Time Worked		Amount Earned.	F. I. C.	Credit Union	Deductions		Net Amount of Check
	Days	Hours				E. B. A.	Purchases Prud Ins	
2-15-41	15	149	91.75	.92			5.30	\$ 85.53
[Pencilled notation on back of first page]: 25 to 1st Jan. 7 days = \$27.11								
2-28-41	13	112½	64.38	.64		.25	3.85	\$ 59.64
3-15-41	15	139½	101.55	1.02	11.63	1.25	5.17	\$ 82.48
3-31-41	16	128	88.20	.88		2.46	3.58	\$ 51.28
4-15-41	15	118	76.95	.77	.25	1.00	6.58	\$ 68.35
4-30-41	15	168 168	123.00	1.23	.25	3.21	3.79	114.52
5-15-41	15	153½	114.15	1.14		1.00	5.58	\$106.43

(Testimony of Leo Archibald.)

Period Ending	Time Worked		Amount Earned.	F. I. C	Credit Union	Deductions		Net Amount of Check
	Days	Hours				E. B. A.	Purchases Prud Ins	
5-31-41	16	136½	98.85	.99		.25	3.62	\$ 93.99
6-15-41	15	137	98.40	.98		1.25	7.99	\$ 88.18
6-30-41	15	135	93.60	.94		1.70	4.68	\$ 86.28
7-15-41	15	132	90.60	.91		1.50	5.93	\$ 82.26
7-31-41	16	183½	138.15	1.38		2.67	10.09	124.01
- 9								
8-15-41	15	160	120.00	1.20	.25	2.05	14.30	\$102.20
8-31-41	16	134½	97.05	.97	2.10	1.30	4.42	\$ 88.26
9-15-41	15	131½	93.30	.93	10.68	3.42	5.98	\$ 72.29

(Testimony of Leo Archibald.)

Period Ending	Time Worked		Amount Earned.	F. I. C.	Deductions		Credit Union	Purchases		Prud Ins	Net Amount of Check
	Days	Hours			E. B. A.						
9-30-41	15	159	110.25	1.10	.25		10.38	7.01	520	1.85	\$ 89.66
[In pencil: 164.50]											
10-15-41	15	156½	114.75	1.15	.50		10.58	10.36	520	(1.85)	\$ 94.01
10-31-41	16	156	\$116.40	1.16	.25		.25	11.69		2.27	\$100.78
11-15-41	13	108½	79.80	.80				16.38			\$ 62.62

(Testimony of Leo Archibald.)

Q. (Mr. Moyle, continuing) Now, you say when you first went to Mr. Rosqvist's, you took one machinist with you and 7 drivers, is that correct?

A. There were six or seven of us; I wouldn't recall the exact number of drivers.

Q. Who was the machinist?

A. Oran Thomas.

Q. Who were the drivers?

A. I couldn't recall the names of the drivers.

Q. Any of them?

A. Guy Campbell was one.

Q. Is he the only one that you remember?

A. That is the only name that I can recall definitely.

Q. Now, Thomas joined the union at your solicitation?

A. No, he joined it of his own choice.

Q. And Guy Campbell joined it at your solicitation? A. No.

Q. Of his own choice?

A. Of his own choice. [359]

Q. You didn't suggest to either of these men that they should join?

A. We had talked the matter over between us.

Q. Now, in your entire 25 years' experience as a machinist and welder—or did you weld for the 25 years?

A. I have done welding incidental to my work for probably 20 years of that time.

Q. You were not what you would call an expert welder? A. That's right.

(Testimony of Leo Archibald.)

Q. And your 25 years' experience had been more as a machinist and mechanic?

A. Mechanical work, yes.

Q. Than welding? A. That's right.

Q. And you in all those 25 years had never joined a union prior to joining on November 7?

A. That's right.

Q. You said that while you were at the respondent's refinery you were only criticized once for your work?

A. That's all I recall. Mr. Rice informed me that I was a little slow in doing certain jobs.

Q. And when was that complaint made?

A. Shortly after I went to work.

Q. And the complaint consisted solely of the fact that you were slow? [360]

A. That's all.

Q. Do you remember burning a hole in one of the tanks at the bottom? A. I don't—

Q. Four inches from where it should have been?

A. I don't recall clearly about that. It could have very easily happened with an arc.

Q. Whether or not it could have very easily happened, it did happen, did it not?

A. I am not sure. I remember something about Mr. Rice saying something about that.

Q. It was a very serious complaint that was made against you and to you at that time on account of that, wasn't it? A. No, it wasn't.

Q. Nothing was said to you about it?

A. I don't recall anything definite about it.

(Testimony of Leo Archibald.)

Q. Well, you wouldn't say that there was not a complaint made and that the matter was not discussed with you?

A. There certainly wasn't any serious complaint made, or I would distinctly remember it.

Q. And you were told at that time that that kind of work could not be tolerated?

A. I know that that was never said to me, or I would remember it.

Q. And that the question of your drinking and your drunkenness [361] on the job was discussed at that time?

A. It was not.

Q. And that you were told that if you continued in your drinking and in doing work of that kind that you would be discharged?

A. That is not true.

Q. And that these occurrences were prior to July of 1941?

A. No, sir.

Q. Can you fix the date when this welding experience to which I have referred occurred?

A. No, I cannot; I remember faintly something of Mr. Rice saying something about I had hit the tank away from the weld causing a leak. In welding, that is very, very easy to do with an arc, simply touch it with the end of the electrode, you wouldn't even know it, but it could cause a leak there. His complaint at that time, I recall talking about it, I had sealed the place I was intending to weld, but had accidentally touched this tank a short distance away from the weld. That is my memory of it.

(Testimony of Leo Archibald.)

Q. As a matter of fact, in touching it in the manner in which you suggest, you burned a four-inch hole through it, did you not? A. No, sir.

Q. When I say four inches, I mean four inches in diameter.

A. No, that would be utterly impossible. [362]

Q. You were not at work on the Fourth of July, you remember that, do you not?

A. I wouldn't recall for sure whether I was or not.

Q. And you were not at work on the 5th or the 6th? A. To the best of my memory—

Trial Examiner Riemer: Do you have the cards or payroll records to show?

Mr. Moyle: Yes.

Trial Examiner Riemer: I will accept those as much better evidence of whether or not this man did or did not work, than his recollections.

Mr. Moyle: This was really preliminary to the next question. I intend to offer the records.

Trial Examiner Riemer: I would certainly prefer to have those rather than this man's recollection.

Mr. Moyle: I will proceed then on that basis.

Q. (Mr. Moyle, continuing) When you came back to work on the 7th of July, that is after the 4th, 5th and 6th, you had been drinking and came on the job under the influence of liquor?

A. That is not true.

Q. And that matter was called to your attention was it not, by your foreman, Kermit Rice?

(Testimony of Leo Archibald.)

A. Yes, that is the time when I remember—that is when I was at Malad and didn't get back here due to personal affairs there, Mr. Rice said he was rather sore at me and he thought [363] maybe I had went off and got drunk. That is what he said. Not that I was drinking then, or had any liquor on me when I came to work. He informed me that he thought probably I had gotten drunk.

Q. The fact is, he did definitely complain about your coming on the job under the influence of liquor after the July 4 holiday?

A. No, sir; that is not true.

Q. Are you unable to say that it was the 4th of July that you went to Malad?

A. I am. I don't remember definitely the dates.

Q. In other words, you don't know what you did on the Fourth of July a year ago?

A. I don't recall for sure.

Q. Now, coming down to the Monday before you were finally discharged, that would be Monday the 10th, do you recall coming to work drunk?

A. No, sir; I did not come to work drunk.

Q. And that you were sent home on that day?

A. I was not sent home. I asked for permission to go home.

Q. And that you were not at work on the 10th, or the 11th, Monday or Tuesday, preceding your discharge?

A. I am not sure if I went to work on the 11th or not. I recall asking for permission to go home because I wasn't feeling well. [364]

(Testimony of Leo Archibald.)

Q. After Mr. Kermit Rice told you that you would have to go home, you told him that you had a bellyache?

A. He didn't tell me—I asked permission to go home.

Q. Well, you told him that you had a bellyache? A. That's right.

Q. Well, Mr. Rice at that time was pretty mad and told you that this situation could not go on any longer?

A. He didn't say anything about it right at that time.

Q. Well, when did he say what I have suggested?

A. I don't recall the exact date that Mr. Rice said to me and I rather thought at the time that he was rather kidding me, that I would have to let whiskey alone if I wanted to work for him.

Q. He told you that?

A. One time he told me, and I told him that any time I came to work when I was drunk, I wanted him to fire me.

Q. And that is what he did on the 14th?

A. That is what he did on the 14th.

Q. Now, for the last month or so, say the last 30 days that you worked for the company, Mr. Rice complained from time to time about the slowness of your work? A. He did not. [365]

Q. (Mr. Moyle, continuing) Now, during all this period, Mr. Archibald, the shop was very busy?

A. Yes, there was always plenty of work there.

(Testimony of Leo Archibald.)

Q. And so far as employees were concerned, the shop was short-handed?

A. That is right.

Mr. Penfield: What period are you talking about?

Mr. Moyle: I am talking about the entire period of Mr. Archibald's employment, January of 1941 to November of 1941.

Q. (Mr. Moyle, continuing) The majority of the work in the shop consisted of repairing, reconditioning, the company equipment which had been involved in wrecks—accidents—collisions?

A. No, that wasn't the case.

Q. Well, what did the work consist of?

A. Routine maintenance, repairs, mostly.

Q. Was there ever a time during the period when you worked for this company when there was not being repaired in the shop some of the company equipment which had been damaged on the road?

Mr. Penfield: I object to that. I don't see that it is relevant.

Trial Examiner Riemer: It is overruled.

A. I don't get your question quite clearly.

Mr. Moyle: Will you read my question, please?

[370]

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Well, that is not clear. What do you mean by "damage"? Do you mean actual wrecks, or due to breakdowns?

Q. Both.

(Testimony of Leo Archibald.)

A. No, there was always something to be repaired.

Q. You knew also that the company was short of rolling stock? A. Yes, I did.

Q. And that when a piece of equipment was laid up for any cause, the company either had to get it fixed as quickly and as expeditiously as possible, or actually delay the transportation of its refined products? A. That's right.

Q. And that the speed in the repairing of its equipment and getting it back on the road was imperative as far as the continued business of the company was concerned, that is correct, isn't it?

A. As far as I am concerned, I take a little more time on the job, and aim to keep it on the road a little longer. That was my only argument with Mr. Rice, and he agreed with me at the time that we spoke of that.

Q. Now, on the morning of the 14th, when you came to work, you came to work sometime before eight o'clock, did you not, in the morning?

A. I was there to report at eight. [371]

Q. And this conversation that you had with Mr. Rice was in the presence of Mr. Thomas?

A. I don't know if Mr. Thomas overheard the conversation or not.

Q. Well, he was right there with you, was he not? A. He was in the shop, I know.

Q. And was Mr. Brown there?

A. I don't recall for certain about that. I don't

(Testimony of Leo Archibald.)

remember seeing Mr. Brown that morning, at that time.

Q. But it was around eight o'clock when you were discharged?

A. I was all ready to go to work, yes.

Q. You hadn't yet begun work? A. No.

Q. So, as you stated yesterday, on your direct examination, you did no work on the 14th?

A. That's right.

Q. For the company. Now, was Mr. Thomas discharged? A. Not to my knowledge.

Q. He continued to work and is still working for the company, is he not?

A. I wouldn't know of my own personal knowledge.

Q. You haven't seen him recently?

A. No.

Q. And Mr. Thomas at that time—that is the time that you were discharged and he was retained—had joined the same union that you had joined?

[372]

A. I don't know how far Mr. Thomas had went with that. I know that he had signed an application.

Q. Well, he signed an application at the same time that you did, didn't he?

A. That's right.

Q. And, as far as you know, was initiated at the same time? A. No, he was not.

Q. Do you know whether he was initiated before or after you?

(Testimony of Leo Archibald.)

A. I don't think that Mr. Thomas was ever initiated. [373]

Q. You testified that there were some of the machinists signed up besides Mr. Thomas in the Union at the time you did, or thereafter. Who were they?

A. I think Mr. Wayne Nord, who was a helper out there. I wouldn't be positive as to whom. [386]

Q. Now, one other instance, do you recall a date last summer when your daughter drove you to work, and you spent the day in somebody else's car, sat in the back seat of the car all day?

A. I did ask permission to leave, and went out and sat in the car one day. [388]

Redirect Examination

Q. (Mr. Penfield) Mr. Archibald, you testified on cross examination that Mr. Rice never asked you about your union affiliations?

A. He never asked me personally about my own. He asked me one morning, if I knew that the truckdrivers had joined the union.

Q. When was this?

A. It was shortly before we were discharged.

Q. How shortly before you were discharged?

A. Oh, just a few days—I don't know exactly the date.

Q. A week or less than a week?

A. Probably around a week or less.

Q. What did you tell him?

A. I didn't tell him what I knew about the

(Testimony of Leo Archibald.)

truck drivers. He didn't ask me my personal affiliation.

Q. What is your present job, Mr. Archibald?

A. I am a welder for the Union Pacific.

Q. Did I understand you to testify that you had been doing both welding and mechanical work for 25 years?

A. Welding probably not quite that long.

Q. How long have you been doing that?

A. Probably 20 years.

Q. On your cross examination, you testified with respect to an instance in which a hole was burned, and you made some state- [389] ment that that could easily happen with an arc welder. Would you explain how that could happen?

A. Well, arc welding, you use a high voltage to carry your metal over and those things easily happen, and you get it between the electrode and the metal adjacent to the weld, if the metal was thin, it would cause a slight crack. That could very easily happen to you at any time.

Q. Could you burn a four-inch hole without knowing it? A. You could not.

Trial Examiner Riemer: Why couldn't you burn a four-inch hole?

The Witness: Your electrode, such as we used out there, is one-eighth of an inch in diameter and it would be impossible to burn a four-inch hole unless you would hold your arc in exactly the right position and draw a circle with it. If you touch

(Testimony of Leo Archibald.)

the metal, it might burn a hole right at that place or cause a crack.

Trial Examiner Riemer: How large would that hole be if you just touched it?

The Witness: It would probably only be a slight crack. It would require an effort on your part to burn a four-inch hole.

Q. (Mr. Penfield, continuing) You testified that Oran Thomas signed an application card in the Machinists at the same time that you did? [390]

A. That's right.

Q. Did Oran Thomas ever take an active part in the union following that?

A. No.

Q. Either out in the plant, or any place else?

A. No, not to my knowledge.

Q. Did he ever pass out cards or collect any money?

A. No, sir.

Q. You testified to one occasion on which you sat in the car most of the day. What were the circumstances concerning that?

A. I didn't want to explain those if I didn't have to. For the past six years, I have been under treatment for ulcers of the stomach, and different things, something I would eat or poison fumes will make me sick. That could easily be verified through Dr. Cochran, at Salt Lake City.

Q. And on this particular occasion, were you ill?

(Testimony of Leo Archibald.)

A. I certainly was.

Mr. Penfield: That is all.

Recross Examination

Q. (Mr. Moyle) Well, you do use liquor?

A. I take a drink occasionally, but very very seldom the last few years because of that condition.

Q. So your ulcers of the stomach are not so bad that they prevent you from drinking whiskey?

A. It is safe to say that I don't take a drink of liquor once [391] in two months.

Q. But you do drink?

A. Very, very seldom.

Q. And when you came to the refinery and sat in this car all day, you didn't ask anybody to take you home?

A. No, I thought that it would pass and I could go back to work.

Q. You didn't start work at all that morning?

A. As I remember, I worked until about ten o'clock and asked permission——

Q. And as the day wore on, you found that your condition didn't get better, and you just stayed there? A. That's right.

Q. You didn't get out of the car at all?

A. I don't know if I did or not. I don't remember that.

Q. And you had not been in contact with any fumes that morning, had you?

A. I don't recall what I had been doing the pre-

(Testimony of Leo Archibald.)

vious day, unless it was welding an oil tank we had laying outside. As I recall, that was the job that I was doing.

Q. When Mr. Brown complained to you about your staying off shift all day, you didn't tell him then that you were sick?

Trial Examiner Riemer: When was that?

Mr. Moyle: This was the day he sat in the automobile.

A. No, Brown made no complaint whatever. I simply told him that [392] I was sick and wanted to rest a while and see if I would feel better, and it was all right with him.

Q. You told Mr. Brown that?

A. Yes.

Q. There wasn't any discussion at that time about drunkenness?

A. No discussion then or afterwards.

Trial Examiner Riemer: Has the time of that incident been fixed?

Mr. Moyle: I have tried to fix it with this witness. He says that he doesn't know when it was.

Q. (Mr. Moyle, continuing) Do you?

A. No, I don't.

Q. Do you have any way of fixing it?

A. There is no way of my fixing that exact date.

Q. Was it before or after the Fourth of July?

A. There is no way of telling for certain.

Q. It was hot weather, wasn't it?

A. Yes, it was warm—summertime.

(Testimony of Leo Archibald.)

Q. It may have been late summer or early fall?

A. That I could not say for sure.

Q. Now, you stated to the Examiner that the crack which you caused in this particular tank was a slight crack?

A. Yes, that's right.

Q. Now, you saw the crack? [393]

A. I don't recall clearly about that. It seems to me that I remember Mr. Rice mentioning the fact that I had struck the tank away from the weld and caused a slight crack, but there wasn't anything in particular said about it.

Q. When was that discussed?

A. I don't know.

Q. When was the complaint made with reference to the time you worked there?

A. Sometime shortly afterwards.

Q. After the truck had gotten out on the road?

A. I suppose that it must have, I don't know.

Q. The truck had to be brought back and steamed out and rewelded?

A. I don't know. I don't recall what——

Q. That is your best recollection?

A. That is my best recollection.

Q. How long does it take to steam out a truck?

A. Steam them overnight, usually.

Q. How big a truck was this—the capacity of the tank?

A. I wouldn't recall the capacity. They run different sizes, and I never noticed particularly which size I was working on.

(Testimony of Leo Archibald.)

Q. You have no recollection at the present moment as to the size of the crack?

A. It would have to be small, I know that from experience.

Q. But you don't know from observation? [394]

A. No.

Q. But you do have a definite recollection that Mr. Rice complained about the work at that time?

A. It wasn't a complaint. He simply told me that I had stuck the tank and made a leak there.

Q. Now, Mr. Rice came back from New York on the 13th of July, did he not?

A. I wouldn't know the date that he came back.

Q. And when the episode of the Fourth of July had been called to his attention, he came to you and told you that, as early as the 13th or 14th of July, if that type of conduct continued he would have to discharge you? A. No, he did not.

Mr. Moyle: That is all.

Trial Examiner Riemer: Anything further?

Mr. Penfield: Yes.

Redirect Examination

Q. (Mr. Penfield) Now with respect to this truck in which you testified that you might have made a hole, do you recall whether that particular truck went out on the road?

A. No, I don't.

Q. Do you know whether it came back and was unloaded and steamed?

A. No, I don't know.

(Testimony of Leo Archibald.)

Q. If it had a four-inch hole in it, could it have been loaded [395] and gotten out?

A. It would be impossible.

Mr. Penfield: That is all.

Q. (Trial Examiner Riemer) Mr. Archibald, are you an auto mechanic?

A. Auto, truck and tractors—gasoline motors.

Q. For example, if a truck came into the garage and needed a carbon job, do you do that sort of job?

A. A carbon job?

Q. Yes, sir; grind the valves?

A. Yes, sir.

Q. Would you tell us the nature of the work that you did for the company at the refinery?

A. Well, any repair of any parts,—motor, transmission, rear end, any part of trucks or the trailers or the semi-trailers. I also built for them a semi-trailer, and I remodeled some of the transportation tanks and trailers so they could use these old tanks. That is, cutting out sections and inserting new sections to fit onto a different trailer.

Q. And you did the welding work in addition?

A. Yes, I did the welding work.

Q. How many truck mechanics were there at the refinery when you were employed, Mr. Archibald?

A. I believe the most at one time was four.

Q. That would include yourself and Oran Thomas? [395]

A. Myself and Oran Thomas and Bud Boyer,

(Testimony of Leo Archibald.)

and they had another fellow there, I believe that he was classed as a helper, and I don't recall his name.

Q. Did Boyer and Thomas do the same sort of work that you performed?

A. No, Mr. Thomas did some welding, but I did nearly all the welding.

Q. Did Boyer do any welding ?

A. I don't think that Mr. Boyer did any welding.

Q. Is it your testimony that you did most of the welding? A. Yes, sir. [397]

Q. Did you have an eight-hour day out there?

A. No, sir; well, in the wintertime, sometimes we would try to hold it down to eight hours, but it was nearly always nine or more.

Q. Was there any understanding that you had to work on Sunday?

A. No, sir; it wasn't compulsory except in extreme cases [398] they would ask you to.

Q. For example, tell us, what would Rice say to you?

A. Oh, he would just tell me, "Here is a certain unit here; we want you to tear the motor down and put in bearings, or grind this set of valves".

Q. And you would go to work on that job?

A. I would go to work and do that. If anything came up that I didn't know what they wanted to do about it, I would consult him or Mr. Brown.

Q. I believe that you have been unable to fix

(Testimony of Leo Archibald.)

the time that you discussed with Rice this question of increasing wages?

A. Yes, sir; I am unable to fix the date.

Q. Well, would you say it was in the summer of 1941?

A. It would be in the summer, yes, sir; sometime. [399]

Q. And in any conversation you had with Moyle over the telephone, did you tell him why you wanted to see him? A. No.

Q. Why did you want to see him?

A. I wanted to simply lay this matter before him and see if I couldn't get better working conditions with a little more wages there.

Q. You wanted to lay what matter before him?

A. This matter of wages and hours.

Q. Had you discussed the question of hours with Rice?

A. I don't recall us having a discussion on the matter of hours.

Q. But you did discuss wages with him?

A. Yes, sir.

Q. Although you wanted to discuss wages and hours and working conditions with Gilbert Moyle, you never succeeded in doing that?

A. I never succeeded in contacting him, no.

Q. Did you attend any union meetings before your discharge, Mr. Archibald? [401]

A. Which union?

(Testimony of Leo Archibald.)

Q. That is a proper question. I mean the union of which you were a member, the International Association of Machinists?

A. No, sir; I didn't attend any regular meetings. I was usually working when they were held.

Q. Did you attend any meetings of the Teamsters Union?

A. No, sir.

Q. Before your discharge? A. No, sir.

Q. On the morning of November 14, 1941, you reported for work?

A. Yes, sir.

Q. How did you come to work that day?

A. In my car.

Q. Where do you live?

A. 556 Jefferson.

Q. How far is that from the plant?

A. Oh, it would be approximately three miles.

Q. Who drove the car to work?

A. I drove it.

Q. What kind of a car is it?

A. Nash LaFayette.

Q. In the three miles that you have to drive to work, do you drive through the City of Pocatello?

A. No, Jefferson is out—

Q. You drove your car approximately three miles to work that [402] morning?

A. Yes, sir.

Q. Were you sober?

A. Yes, sir.

(Testimony of Leo Archibald.)

Q. Were you in fit condition to go to work?

A. Yes, I was.

Q. Had you worked on Friday, November 13?

A. Yes.

Q. Do you recall where you spent the evening of Friday, November 13th?

A. At home, to the best of my memory.

Q. Are you married?

A. Yes, sir.

Q. Do you have any children?

A. And grandchildren.

Q. Good for you. Mr. Archibald, you have testified that on various days you have reported for work and thereafter asked permission to be allowed to go home or to leave?

A. Yes, sir.

Q. On other occasions, you have testified that you did not report for work on some days—three or four days—on account of illness, I believe, and once because of some personal matters in Malad?

A. I think that is the only time, Mr. Examiner, that I was ever absent without permission, when I was in Malad due to personal business. [403]

I didn't get back and tried to call Mr. Rice, and didn't contact him.

Q. On days you reported for work and sought and obtained permission to leave, why did you have to quit?

A. Due to illness.

Q. What illness?

A. I hated to bring this out. I have ulcers of

(Testimony of Leo Archibald.)

the stomach, and sometimes I upset very easily, and it makes me very sick.

Q. Are you under treatment locally?

A. Dr. George Cochran of Salt Lake City. I am not under treatment right at the present time, but I was for a period of about six years.

Q. Will you please relate the conversation that you had with Mr. Rice on the morning of November 14, 1941?

A. All that was said that morning, I was unloading my tools and getting ready to go work, and he came in and walked over to me and said, "Sorry, but I will have to lay you off."

Q. What did you say?

A. I looked at him a little surprised, and I asked him if I might inquire why, and he says, "Yes, for getting drunk and laying off work".

Q. Was anything else said?

A. That was all that was said, except that I just laughed and told him that we both knew what it was all about.

Q. Was there anybody else present? [404]

A. Mr. Thomas was in the garage. Whether or not he overheard the conversation, I don't know.

Q. Where was he standing, do you know?

A. No, I couldn't place him exactly.

Q. Was he adjacent to or standing with you and Rice?

A. He wasn't standing with us. He was nearby.

Q. Do you know if Thomas was at his work bench or tool box?

(Testimony of Leo Archibald.)

A. No, I don't.

Recross Examination

Q. (Mr. Moyle) Before you went to work for the Union Pacific, in your present position, you had to take the medical examination, did you not?

A. That's right.

Q. What doctor examined you?

A. I think that it was Dr. Ray. I never did know his name for [405] sure, but I believe that is his name.

Q. And he passed you as fit for employment, of course, and you were employed after an examination?

A. I was employed, yes.

Q. Did you report to Dr. Ray the fact that you had ulcers that interfered with your work?

A. As I just said, I am no longer under treatment for ulcers. If I have them at all now, they are not bothering me.

Q. I just asked you if you called Dr. Ray's attention to that fact?

A. He didn't ask me, and I didn't tell him.

Mr. Penfield: I submit that the witness answered the question in the first instance.

Q. (Mr. Moyle, continuing) When were you last treated by Dr. Cochran in Salt Lake?

A. I could not fix the exact date. Dr. Cochran gave me a special diet to keep up and medicine to take.

Q. In any event, it was prior to your employment with the refining company?

(Testimony of Leo Archibald.)

A. Yes.

Q. That would be prior to 1941?

A. Yes, prior to that, but I was still getting some treatment at that time.

Q. During your employment with the refining company, you were not under medical treatment of any doctor? [406]

A. Only in taking—using this diet, that is all.

Q. How long before the beginning of 1941 was it that you last saw Dr. Cochran, was it in 1940, or prior to 1940?

A. I couldn't place the date when I last saw him.

Q. Would you say that you saw him during 1940?

A. 1940? Yes, I saw him sometime during 1940, but I could not place the date.

Q. What part?

A. I don't know.

Q. Winter, summer or spring?

A. I should judge it was sometime early in 1940—quite early.

Q. Were you working at that time at Boise?

A. No, sir; I was working at Pocatello?

Q. Working for the State in Pocatello?

A. That's right.

Q. And you went down to Salt Lake frequently in 1940?

A. No.

Q. Dr. Cochran treated you nowhere else other than in Salt Lake?

A. That's right.

(Testimony of Leo Archibald.)

Q. And you don't have any recollection now when you were in Salt Lake in 1940?

A. I haven't the date. It wasn't necessary to contact him often at all.

Q. And it may be that it was 1939 when you last contacted him? [407]

A. No, I think not. It was in the early part of 1940.

Q. Did you contact him more than once in 1940?

A. Not that I recall.

Q. Did he give you any instructions about drinking hard liquor?

A. He always gave me a written sheet, sort of diet instructions and certainly not to drink liquor to any excess at all.

Q. You mean that he told you not to drink liquor?

A. To excessive amounts, no.

Q. I am asking you if he told you not to drink it at all?

A. He didn't tell me not to drink it at all.

Q. On account of this condition you suffered from while you were employed by the refinery, didn't liquor have a greater effect on you, that is an intoxicating effect than it did prior to your ulcerous condition?

A. Well, I wouldn't ordinarily know. I haven't had enough experience with it.

Q. I see. In other words, you want to go on record here as stating that you have never been drunk?

(Testimony of Leo Archibald.)

A. No, sir; I do not. I have been drunk.

Mr. Moyle: That is all.

Redirect Examination

Q. (Mr. Penfield) Are you still on a diet?

A. No.

Q. When did you cease your diet?

A. Well, that is rather a hard question to answer, because even [408] now I am a little particular of what I eat.

Q. But not a regular diet?

A. No. I think sometime in 1940 was the last time I followed on a strict diet.

Q. You testified that you have been drunk. Did you ever report to your job drunk?

A. No, sir.

Q. Or any other job?

A. Nor any other job.

Mr. Penfield: That is all.

Trial Examiner: You are excused.

(Witness excused)

Mr. Penfield: I will call Mr. Williams.

ROY WILLIAMS

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

(Testimony of Roy Williams.)

The Witness: Roy Williams.

Trial Examiner Riemer: Where do you live?

The Witness: Boise, Idaho.

Direct Examination

Q. (Mr. Penfield) Where are you employed at the present time?

A. For the Idaho Power Company.

Q. In what capacity? [409]

A. Working with the substation crew for the Idaho Power Company.

Q. What type of work?

A. Construction work.

Q. Where are you doing this work at the present time?

A. At the present time, we are working at Eden.

Q. Eden, Idaho?

A. Yes.

Q. Were you ever employed by the Idaho Gas & Oil Company?

A. Yes, sir.

Q. In what capacity?

A. I was deliveryman and warehouseman.

Q. Where were you employed?

A. Boise warehouse, Boise plant.

Q. What were your duties?

A. I done the delivering, and also kept the warehouse up.

Q. You mean that you did the delivering in trucks?

A. Yes.

Q. What sort of trucks were these?

(Testimony of Roy Williams.)

A. One was an International, 1000 gallon tank, and one GMC.

Q. What territory did you cover?

A. McCall,—from Boise to McCall, and Boise to Mountain Home and Boise to Nampa and Caldwell.

Q. You carried gasoline in these trucks?

A. Yes, sir. [410]

Q. Where did you deliver the gasoline?

A. To various company stations.

Q. You mean stations of the Idaho Gas & Oil Company?

A. That is right.

Q. Do you know W. A. Sheppard?

A. Yes.

Q. Who is he?

A. He is a district manager for the Idaho Refining Company.

Q. Do you mean the Idaho Refining Company, or the Idaho Gas & Oil Company?

A. The Idaho Refining Company.

Q. Was it the Idaho Refining Company you worked for, or the Idaho Gas & Oil Company?

A. Idaho Gas & Oil Company.

Q. But you say that Mr. Sheppard was a district manager of the Idaho Refining Company?

Mr. Merrill: We object to that on the grounds that it is repetitious and has been answered.

Trial Examiner Riemer: Overruled. Read the question.

(Testimony of Roy Williams.)

(Last question read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) What is your answer?

Mr. Moyle: That is, if he knows.

A. I thought Mr. Sheppard was district manager for the Idaho Refinery Company. I am not sure. [411]

Q. (Mr. Penfield, continuing) How many employees were there at Boise? What was there at Boise? You testified that there was a warehouse that you worked in? A. Yes.

Q. What else was there?

A. There were three employees—there were four, including the bookkeeper.

Q. What did these four employees do?

A. Deliverymen.

Q. Doing the same sort of work that you did?

A. Yes.

Q. And there was one bookkeeper?

A. Yes.

Q. Do you know whether all of these employees were on the payroll of the Idaho Gas & Oil Company?

A. Yes, they were.

Q. Did Mr. Sheppard supervise your work?

A. Yes, sir.

Q. Did he hire these employees?

A. Yes, he did.

(Testimony of Roy Williams.)

Q. Did he hire you? A. No.

Q. Who hired you?

A. Mr. Moyle.

Trial Examiner Riemer: Gilbert Moyle. [412]

Q. (Mr. Penfield, continuing) Was that Gilbert Moyle?

A. Gilbert Moyle.

Q. What was the date that you were first employed by the Idaho Gas & Oil Company?

A. July 1, 1938.

Q. What date did you cease your employment?

A. May 22, 1942.

Q. Do you recall any conversation with Mr. Sheppard in November, 1941? A. Yes.

Q. What conversation do you recall, and when did it occur?

Mr. Merrill: I object to that question on the ground that it is incompetent for any purpose. The Idaho Gas & Oil Company is not a party to this, and I think that it has been definitely proved here that it is now owned by the Idaho Refining Company but by independent and individual stockholders entirely.

Trial Examiner Riemer: The objection is overruled. In the Examiner's opinion, there is a sufficient community of interest between the Idaho Gas & Oil Company and the respondent to bring the Idaho Gas & Oil Company within the provision of the Act. Read the question.

(Testimony of Roy Williams.)

(Last question read aloud by the reporter as hereinabove recorded.)

A. November 13.

Q. (Mr. Penfield) What was this conversation? [413]

A. Mr. Sheppard called me at my home.

Q. On the telephone?

A. Yes, sir, and wanted to know if I knew where he could hire truckdrivers.

Q. And what did you tell him?

A. I told him that I didn't know

Q. What did he mean—hire truckdrivers?

Mr. Merrill: I object to that on the ground that it calls for the conclusion of this witness as to what another man meant.

Trial Examiner Riemer: Sustained.

Mr. Penfield: I will reframe the question.

Q. (Mr. Penfield, continuing) Did he say where these drivers were to work?

A. Pocatello.

Q. Did he say when they were to go to work?

A. The next morning.

Q. Following your telephone conversation, did you have any further conversation with Mr. Sheppard?

A. Yes, sir.

Q. When did that take place?

A. On the 16th—no, the next one was on the 14th

Q. Where did that take place?

A. At the office.

Q. That is at the office of the Idaho Gas & Oil Company? [414]

(Testimony of Roy Williams.)

A. Yes.

Q. What did Mr. Sheppard tell you at that time?

A. He just told me that they wanted some drivers to send to Pocatello to go to work driving.

Q. Is that all he said? A. Yes.

Q. Did you have any further conversation with Mr. Sheppard?

A. Yes, two or three days later, possibly the 16th—it was on the 16th—Mr. Sheppard came out to my house.

Q. That was in Boise?

A. Yes.

Q. What occurred during this meeting?

A. Mr. Sheppard wanted to know if Ray Pittman, Mervin Zollman had joined the union.

Q. Who are Ray Pittman and Mervin Zollman?

A. They were the two delivery men other than myself.

Q. That is delivery men in the Idaho Gas & Oil Company?

A. Yes.

Trial Examiner Riemer: What union is this, please?

The Witness: I imagine it was the Teamsters Union.

Q. (Mr. Penfield, continuing) Did he mention specifically any union?

A. No, he didn't.

Q. What did you tell him?

(Testimony of Roy Williams.)

A. I told him that I didn't know. [415]

Q. Did you have any other or further discussion with him?

A. Well, he wanted me to ask him if they had.

Q. What did you tell him?

A. I turned him down and told him "no".

Q. Did he give any reason for speaking to you?

A. Well, the reason he gave to me, I guess——

Mr. Moyle: We object to his guessing.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing) State what he said.

A. He stated that the reason that he came to me was because he didn't think that I would join the union.

Q. Did he say anything further with respect to Pittman and Zollman?

A. Yes, he did.

Q. What did he say?

A. He said that if Mervin Zollman and Ray Pittman had joined the union, he would have to let them go, and Mervin Zollman had had an accident, a wreck with a truck and run into a horse, and Ray Pittman had run over some gasoline, and made several other mistakes, and he was going to use that as an excuse.

Q. Is that all the conversation that you had with Mr. Sheppard on that occasion?

A. Yes.

Mr. Penfield: No further questions.

(Testimony of Roy Williams.)

Cross Examination [416]

Q. (Mr. Merrill) When did you leave the employment of the Idaho Gas & Oil Company?

A. May 22, 1942.

Q. Was there any particular reason for your leaving? A. Yes.

Q: Were you discharged? A. No.

Q. You sought a job elsewhere?

A. That was one reason.

Q. How long had you been working for the company?

A. Since July 1, 1938.

Q. Did you have difference with Mr. Sheppard?

A. Yes.

Q. That was your other reason for leaving?

A. Yes.

Q. Was there some feeling between you and Mr. Sheppard?

A. Well, I just couldn't get along with him.

Q. There is some feeling now between you and Mr. Sheppard? A. No.

Q. But you don't like him? A. No.

Q. And that was your principal reason then for leaving?

(Testimony of Roy Williams.)

A. No, not necessarily.

Q. Were you a member of the union yourself?

A. No, sir. [417]

Q. Are you now? A. No, sir.

Q. Now, you say that it was on the 13th——

A. Yes, sir.

Q. ——that you were called by Mr. Sheppard, and he asked if you knew where he could get some employees for truckdriving? A. Yes.

Q. Did he tell you then that he wanted them in Pocatello? A. Yes.

Q. You are sure of that date of November 13?

A. I am almost sure.

Q. 1941? A. That is right.

Q. Could it have been the 14th?

A. No, he called me—I talked to him the morning of the 14th at the office.

Q. How do you fix that date?

A. Well, it was on a Thursday that he called me on the 13th.

Q. How do you fix the date? Do you have any outside way of fixing that date?

A. That is the day that the boys was dismissed.

Q. What day was that?

A. On the 14th, they were dismissed, but he told me—

Q. How do you know—who told you that?

A. Mr. Sheppard. [418]

(Testimony of Roy Williams.)

Q. When? A. On the 14th.

Q. But he called you previously on the 13th?

A. Yes, sir.

Q. What time of day?

A. About eight o'clock in the evening, or it was in the evening; I wouldn't say that it was eight o'clock. It was in the evening.

Q. Did you ask why he wanted drivers for Poccatello?

A. No, sir; I didn't.

Q. That didn't occur to you? A. No.

Q. Were you interested in that at all?

A. No.

Q. Did you have anything to do with the drivers?

A. No, sir.

Q. Was there any particular reason why he should call you about drivers?

A. The only reason is possibly because he thought I would know about some drivers.

Q. And you didn't know of any?

A. No.

Q. And you are certain that that was on November 13? A. Yes.

Q. You say it was on November 14 that you went down to the [419] office?

A. Yes.

Q. Did you have any particular reason for going into the office that day?

A. Yes, sir.

(Testimony of Roy Williams.)

Q. What was it?

A. To see which orders were to be delivered.

Q. Did you ask Sheppard then why he called you?

A. No, sir.

Q. He volunteered the information again?

A. Yes, sir.

Q. And said that they wanted men to go toocatello?

A. Yes.

Q. He told you did he not that they wanted good men?

A. He told me that they wanted truckdrivers.

Q. Did he tell you anything about competency, did he say anything about that?

A. No, sir.

Q. At any of these periods, did he say anything to you about competent drivers?

A. No, sir.

Q. Just mentioned truckdrivers?

A. Just truckdrivers.

Q. You say that Sheppard never mentioned any particular union when you say that he asked if Pittman and Zollman belonged [420] to a union?

A. No, sir, he did not.

Q. And you told him that you didn't know whether they did or not?

A. That is right.

Q. Did you belong to the Idaho Refining Company Employees Benefit & Labor Association?

A. No, sir; I did not.

(Testimony of Roy Williams.)

Q. Have you ever belonged to it?

A. No, sir.

Q. But you worked all that period of time without belonging to it?

A. Yes, sir.

Q. You never have asked to join, I suppose?

A. No.

Q. Nor made any application?

A. No.

Q. Who were Pittman and Zollman?

A. They were two deliverymen at the Boise bulk plant.

Q. Do you know whether or not they belonged to this employees union or association?

A. What was the question?

Q. Do you know whether they belonged to this Employees Labor Association?

A. They did not. [421]

Q. And you never asked them whether they belonged to any union or not? A. No, I didn't.

Q. Now, Sheppard didn't purport to tell you that he was doing other than inquiring on his own behalf, did he?

A. What was that question again?

Mr. Merrill: Read the question, please.

(Last question read by reporter.)

A. No, he didn't.

Mr. Merrill: I think that is all.

(Testimony of Roy Williams.)

Redirect Examination

By Mr. Penfield:

Q. Mr. Williams, do you know for sure whether or not Pittman and Zollman belonged to the Idaho Refining Company Employees Benefit and Labor Association? A. No, they don't.

Q. Do you know that they don't? A. Yes.

Mr. Penfield: That is all.

Trial Examiner Riemer: You are excused.
Thank you.

(Witness excused.)

Mr. Leicht: We will call James Ayers.

JAMES AYERS

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows: [422]

Trial Examiner Riemer: State your full name, please.

The Witness: James Ayers.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Trial Examiner Riemer: Would you speak as loudly as you can, please?

The Witness: Yes.

(Testimony of James Ayers.)

Direct Examination

By Mr. Leicht:

Q. Where are you employed at the present time, Mr. Ayers?

A. The Naval Gunnery Relining plant for the Morrison-Knudsen Company.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truck driver.

Q. When were you first employed out at the Idaho Refining Company?

A. The 7th day of September, 1938.

Q. And were you employed at that time as a truckdriver? A. Yes, sir.

Q. Had you had experience as a truckdriver before that? A. Yes, sir.

Q. What was your experience?

A. Well, I drove for the United Companies for about 13 months [423] before, and I drove construction trucks around the country and for different construction companies.

Q. Have you ever done any other kind of work except truckdriving? A. Yes.

Q. But your experience was largely as a truckdriver, is that correct? A. Yes.

Q. How long did you work for the Idaho Refining Company?

A. September in 1938 to November in 1941.

Q. What day in November? A. The 14th.

Q. Did you ever receive a notice of separation and disqualification such as I hold in my hand?

(Testimony of James Ayers.)

A. Yes, sir.

Q. Does that show the last day worked was on November 14, 1941? A. Yes, sir.

Q. Did you do any work on November 14, 1941 at all? A. No, sir.

Q. What has your employment been since November 14, 1941?

A. Well, I drove a Union Pacific bus from the 19th of December——

Mr. Moyle: Doesn't this come under the ban, Mr. Examiner?

Trial Examiner Riemer: I don't think so. [424]

Mr. Leicht: I am not inquiring into the earnings.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record. Read the last question, please.

(Last question read by the reporter.)

A. Until about the 15th of March and we were laid off then due to the fact that there was not enough business for the extra board drivers.

Q. Since then, you have been employed at the gun plant? A. Yes.

Q. During the time that you worked for the Idaho Refining Company, did you ever have any accidents? A. None whatever.

Q. Were you a member of the Idaho Refining Company Employees Benefit and Labor Association? A. Yes, sir.

(Testimony of James Ayers.)

Q. Do you know whether any of the other truck-drivers were members?

A. Well, I think that most of them were, yes.

Q. Did you ever hold any office or serve on any of the committees of that organization?

A. I believe that I was on the grievance committee once. I don't know what date it was,—what term that was. [425]

Q. When you came to work for the company, were you a member of any labor organization?

A. No, sir.

Q. Did you become a member of any labor organization while you were employed there, other than the Association?

A. Yes, sir; I became a member of the Teamsters Union, I believe it was in October.

Q. I show you Board's Exhibit Numbered 5-A, and ask you whether that is your signature on the application blank? [429]

A. Yes, sir.

Q. And will you tell us just what that is?

A. Well, it is an application for membership in the International Brotherhood of Teamsters.

Q. There apparently is no date on that application, is there?

A. No, sir.

Q. Can you tell us about what date you signed this application?

A. Well, as I recall it, it was pretty well to the first of October when we made our application, and we paid part of our initiation fees at the time and it was about the latter part of October when we finished paying up our initiation.

(Testimony of James Ayers.)

Mr. Moyle: May we inquire to whom he refers by the pronoun "we"?

Trial Examiner Riemer: The witness testified the latter part of October when "we" finished paying up, or words to that effect. What do you mean by the use of the word "we"?

The Witness: Well, about 21 truckdrivers.

Q. (Mr. Leicht, continuing): Truckdrivers of what company?

A. Of the Idaho Refining Company.

Q. Do you recall where you signed that application?

A. Yes, sir; in the American Federation of Labor Hall, South Main Street, Pocatello.

Q. Do you know whether any of the other truckdrivers joined the Teamsters Union that you did at that time? [430]

A. Yes, sir.

Q. At the same time, or approximately the same time, was it?

A. Yes, sir.

Q. Do you recall how many of the Idaho Refining Company truckdrivers had joined by November 1, of 1941?

A. Well, I think about 18 of them.

Q. Do you know how many joined altogether?

A. Well, I believe that it was 21.

Q. Did all the truckdrivers join?

A. No, they did not.

Q. How many did not?

A. Well, there was one that wasn't asked to join.

Trial Examiner Riemer: Who was that, Mr. Witness, please?

(Testimony of James Ayers.)

turned tomorrow and obtain the records. Proceed, Mr. Leicht.

Q. (Mr. Leicht, continuing): At the time that you had this discussion with Mr. Rice on November 13, there had been no agreement presented to the company that you know of, had there?

A. No, there hadn't.

Q. Now, what occurred on November 14?

A. Well, about 9:00 o'clock in the morning, Mr. Rice called me up and wanted me to come out to the plant. He told me that he wanted to talk to me. I went out there and he told me that the insurance had been cancelled on the trucks, and he was going to have to get a new bunch of truck-drivers, and I said if that was the case, he would have to get them, that was all.

Q. Did you get your check that same day?

A. I got a check about a quarter to twelve that same day.

Q. When was your regular pay day? [434]

A. On the 5 and 20th of every month.

Q. Now, while you were working for the Idaho Refining Company, did anyone in authority there ever criticize your work?

A. Oh, it is natural to be criticized once in a while, yes.

Q. Anything serious?

Mr. Merrill: Well, that calls for a conclusion.

Trial Examiner Riemer: Sustained. Find out about what and why he was criticized.

(Testimony of James Ayers.)

Q. (Mr. Leicht, continuing): If there was criticism, what was it about?

A. Well, I think that the only thing was about making a little bit too good a time from Pocatello to Burley and back on one trip.

Q. When was that?

A. About two years ago this spring. [435]

Cross Examination

By Mr. Moyle:

Q. Now, Mr. Ayers, you say that you never heard of the cancellation of a policy. You did hear from time to time, criticism offered by the insurance carrier?

A. Yes, I did.

Trial Examiner Riemer: Excuse me. Will you please read me that question and answer?

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Moyle): And you were from time to time told that the record of losses was such that if it continued the policies would be cancelled?

A. No, sir.

Q. When you heard what you did hear, what did you hear?

A. Well, I believe at one of the meetings of the truckdrivers in 1939, Mr. Webb and Mr. Rice were talking about getting Merit Awards for the drivers and they were talking about wrecks. I think that he had one wreck about that time. I am not positive, but I think they were talking about getting a

(Testimony of James Ayers.)

merit system and giving out safety awards for drivers.

Q. Well, now, that had nothing to do with any insurance carrier. Is that the only time that anything was said about safety?

A. Well, as I recall it, it is. [437]

Q. Now, as a matter of fact, from the time that you refer to, when Mr. Webb impressed upon you the importance of establishing a better record, either by a merit system or some other system, as early as that, he told you that we would have to be careful to prevent the cancellation of our insurance, did he not?

A. Yes, sir.

Q. From time to time, after that, there were meetings held with the drivers at which this same subject was discussed?

A. Well, there was probably one or two meetings that was brought up about. There was some meetings that they had that I was unable to attend.

Q. Yes, but you either attended or knew that there were two or three other meetings held?

A. Yes, sir.

Q. At which the question of the insurance carrier and of our losses was discussed?

A. Well, I wouldn't swear to that. If I had heard it, it would be hearsay.

Q. Well, I say that came to your knowledge, hearsay or otherwise?

A. Yes, hearsay. [438]

Q. Now, at that meeting, the question of the cancellation of the insurance was discussed by Mr. Moyle, was it not?

(Testimony of James Ayers.)

A. Not to my knowledge or recollection, it wasn't.

Q. Were you there during all of the meetings?

A. Yes.

Q. Didn't you hear Mr. Moyle say to you that the carriers were then threatening to cancel our insurance?

A. I don't remember.

Q. If we had any other serious losses?

A. I don't remember.

Q. You wouldn't say that he didn't make that report at that meeting? [440]

A. No, sir.

Q. And he pleaded with you at that meeting to be as careful as you could as drivers of the company?

A. Well, he said something about being a little more careful, yes.

Q. You said on your direct examination that he told you that you were a pretty good bunch of drivers?

A. Yes.

Q. At the same time, however, he told you that it would be necessary to be more careful, didn't he?

A. Yes.

Q. And that the losses we had sustained, that is, the insurance company had sustained, were such that if they continued, the insurance would be cancelled?

A. I don't recall him saying that, no.

Q. But you left that meeting and you continued to work with that in mind, did you not?

A. Yes, sir.

(Testimony of James Ayers.)

Q. Knowing that was the situation?

A. Well, I knew——

Q. From what had transpired, you knew that?

A. I knew that the insurance company could cancel the policy all right. [441]

Q. (Mr. Moyle, continuing): You knew, generally speaking, of the losses that had been suffered by the company in its insurance carrier?

A. Yes, sir.

Q. And you knew that from time to time, when these losses arose and occurred, that there was discussion between the management and the employees, with reference to the threat of a cancellation of these policies?

A. The only time that I can be sure of that is the talk with [443] Mr. Webb.

Q. Then again in October you recall another occasion when the drivers either collectively or individually were notified that a letter had been received by the management threatening to cancel the policy upon the occurrence of the next major accident?

A. No, sir.

Q. That was never called to your attention?

A. If it was, it was by hearsay from somebody else, some other source other than the officers of the company.

Q. You did hear that from some other source?

A. Some other source, yes.

Q. So word had been passed around, then to you from the management to the other drivers and by them to you, that such a letter had been received?

(Testimony of James Ayers.)

A. Well, I don't believe that the management told the drivers nor anybody else about it.

Q. Whether the management told them that or not, they did tell you?

A. In a roundabout way, yes.

Q. And at the time that you joined the local union, 440, you knew that such a threat by the insurance companies had been made to the company, in this roundabout way? A. Yes.

Q. Now, after that, and in the early part of November, there [444] was another major accident, wasn't there? A. Of what year?

Q. 1941. A. Prior to November?

Q. I say, the first part of November.

A. Yes, I believe there was.

Trial Examiner Riemer: What was that accident?

Mr. Moyle: Well, we will go into the details of it, unless you may prefer to have us do it now.

Trial Examiner Riemer: Well, I want you to do it now and then you can do it again if you wish. Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Moyle, continuing): Well, what do you know about that major accident while you were still employed?

A. Well, the only thing that I know is where it happened.

Q. Where did it happen?

(Testimony of James Ayers.)

Q. Was Kenneth Brower discharged on November 14? A. I believe he was.

Q. And he was working for the Refining Company at that time, wasn't he? A. Yes, sir.

Q. Isn't he one of the complainants in this case, do you know?

A. I don't think that he is, no.

Trial Examiner Riemer: Can you tell me, Mr. Leicht, if K. C. Brower, is the Kenneth Brower this witness has been talking about?

Mr. Penfield: That is correct. [462]

Trial Examiner Riemer: It is the same?

Mr. Penfield: Yes. [463]

Q. Now, on November 14, 1941, which was a Friday, Mr. Rice telephoned you, is that correct?

A. On the 13th?

Q. The 14th. A. The 14th, yes, sir.

Q. What time did he telephone you?

A. Well, to my best recollection, about 9:30.

Q. What did he tell you?

A. He told me to come out to the refinery, that he wanted to talk to me.

Q. Did he say anything else over the telephone?

A. No, sir.

Q. Do you know if he telephoned anybody else?

A. Well, only the drivers that told me that he did.

Q. When you got to the refinery, were there any other drivers there?

A. I believe Kenneth Brower was there, and Myron Whitesides. [465]

(Testimony of James Ayers.)

Q. Those three—that would include yourself?

A. Yes.

Q. Did Mr. Rice then speak to you?

A. Yes, sir.

Q. Were Brower and Whitesides present?

A. Oh, I think that they were possibly 50 or 75 feet away.

Q. What did Rice say to you?

A. Well, he said that he had some bad news for us, that the insurance had been cancelled on the trucks, and that he had to lay all of us off and get a new bunch of drivers. [466]

Recross Examination

By Mr. Moyle:

Q. Do you recall an incident when you and Hank Henderson were stopped by Kermit Rice for going too fast?

A. I believe that we were stopped out by the airport one night, but I don't think that we were going too fast, due to the fact that it is uphill, all the way.

Q. He told you that you were going too fast?

A. No, I think that he told us, he asked Mr. Henderson if he was pushing the truck I was driving with the one he had. He had a big truck and I had a small one, and he asked Henderson if he was pushing uphill.

Q. He told you to separate and go slower?

A. He didn't say anything about going slower.

Q. You remember that he told you to separate?



No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.
IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME II
Pages 499 to 836

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

JAN 19 1944

PAUL P. O'BRIEN.

No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

vs.

IDAHO REFINING COMPANY.
Respondent.

Transcript of Record
In Three Volumes
VOLUME II
Pages 499 to 836

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

JOHN EVANS

[472]

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name, please.

The Witness: John Evans.

Trial Examiner Riemer: What is your address?

The Witness: 150 North Johnson.

Direct Examination

By Mr. Penfield:

Q. Where are you working at the present time?

A. Union Pacific Stages.

Q. What capacity? A. Bus drivers.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truck driver.

Q. For what period of time?

A. Beginning on September 20 of 1939 until November 14, 1941. [473]

Q. Who was your immediate supervisor?

A. Kermit Rice.

Q. Did you receive any directions from anyone else? A. Yes, sir.

Q. Who was that? A. Spike Henninger.

Q. At the time that you came to work for the company, were you a member of any labor organization? A. No, sir.

Q. While you worked for the company, did you become a member of the Idaho Refining Company Employees Benefit and Labor Association?

(Testimony of John Evans.)

A. Yes, sir; I did.

Q. In the six months preceding your discharge, do you recall any talk about an outside union among the truck drivers?

A. Yes, sir; I do.

Q. When did you first hear such talk?

A. Well, the first that I heard of it was somewhere around about the 16th of July in 1941.

Q. Is there anything that fixes the 16th of July in your mind? A. Yes, sir.

Q. What?

A. Well, I had been away on my vacation and came back and returned to work on the 16th of July and that is the first that I heard about it, when I came back. [484]

Q. Who participated in this discussion?

A. The truck drivers.

Q. What was the nature of the discussion?

Mr. Merrill: We object to that on the ground it would be hearsay, there is no showing that the company knew anything about it whatever.

Trial Examiner Riemer: The objection is overruled with the reservation of your right to move to strike. Read the question.

(Last question thereupon read aloud by the reporter as hereinabove recorded.)

A. Well, while I was away in the East, they had had some kind of a meeting, or something, and the rate of pay, the system of pay, had been changed from an hourly basis to a monthly basis, and the boys all felt they were taking a cut by

(Testimony of John Evans.)

this change and they were pretty much dissatisfied, and we decided that the best way to get better working conditions and a better rate of pay would be through an organization outside of the company.

Q. As the result of this discussion, was any action taken? A. Yes, sir.

Q. What action?

A. Eventually all the drivers excepting one joined the union.

Q. Was that sometime after this? A. Yes.

Q. Did you join the Union? [485]

A. I did, yes, sir.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Mr. Penfield: Will you read the last question and answer?

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Mr. Merrill: Which Union do you mean?

Q. (Mr. Penfield, continuing) Teamsters' Local 440? A. Yes, sir.

Q. I show you Board's Exhibit 5-H, and ask you to tell me what that is?

A. That is an application blank for membership in the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers.

Q. Does it set forth the Local Number?

(Testimony of John Evans.)

A. Local No. 440.

Q. Is that your signature appearing on it?

A. Yes, sir.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield, continuing) Where did you sign this application card which is Board's Exhibit 5-H?

A. In Mr. Rosqvist's office in the Labor Temple.
[486]

Q. In whose presence?

A. Mr. Rosqvist and Tom Brandt.

Q. Were any of the truckdrivers present?

A. I think that there were two with me.

Q. Do you recall which two?

A. James Ayers and Leonard Fowler.

Trial Examiner Riemer: Can you tell us when it was that you signed this application card?

The Witness: On the 29th of September, 1941.
[487]

Q. (Mr. Penfield, continuing) What happened on the morning of November 14, 1941?

A. Well, we were all fired.

Q. Well, will you explain just what you did that morning?

A. Well, I went over to the refinery with the rest of the boys, and along about nine or—between nine and nine-thirty in the morning, and waited over there until 11:45, and I got my check.

(Testimony of John Evans.)

Q. Whom did you see when you went over to the refinery?

A. Well, I seen all the drivers who were in town at that time. [490]

Q. Had you been called out to the refinery that morning? A. No, I hadn't.

Q. Had you been out on a trip the day before?

A. Yes, sir.

Q. What time had you gotten in?

A. I got in Pocatello at 9:30 on the evening of November 13.

Q. Did you check the board to see if you were assigned to a trip the following day?

A. Yes, I did.

Q. Was such an assignment posted?

A. Yes, sir.

Q. Where were you assigned to go?

A. As near as I remember it, to Idaho Falls.

Q. Was any particular time set for your departure? A. No, there was not.

Q. Did you receive your check on November 14? A. Yes, sir.

Q. At what time? A. 11:45 a.m.

Trial Examiner Riemer: I am not sure yet, Mr. Penfield, what happened on November 14. I wish that you would go into that.

Q. (Mr. Penfield, continuing) Will you explain to us further what occurred in the plant on the morning of November 14?

A. Well, Mr. Rice had called most all of the drivers that were in town—— [491]

(Testimony of John Evans.)

self decided that we would go to the office and see if we could find Mr. Rice to find out what was going to take place. We went in the office and stopped at the telephone booth where the telephone girl is, and stood there for a few minutes, and Mr. Rice came out, and he had the checks all in his hand, and he seen Jim Ayers and myself standing there by the door, and as he went by, he handed us our checks, and never said anything to us, just handed us our checks and went on out, and we went out in front of the office and stood there and talked a few minutes, then followed Mr. Rice on out to the garage where the rest of the boys were, and when we got out there, he was giving them their checks, and from then on, we just scattered out and went home.

Q. (Mr. Penfield, continuing) Were all the truck drivers present at the plant that morning?

A. No, sir.

Q. How many of the whole crew?

A. Well, there were about 5 or 6 of them I think that was out on trips.

Q. Do you know who those were?

A. Well, most of them, yes.

Q. Who were they? [494]

A. P. P. Stanger was out. He was in Salmon, Idaho, and Leonard Fowler was out, he was on his way back from—I wouldn't say whether it was Boise, either Boise or beyond there, I don't know; it was a long trip, anyway; and Boyd Cornia, was in Blackfoot; John Ray was in Twin Falls, I don't

(Testimony of John Evans.)

remember whether there was any more than that out or not, but I know that there was that many.

Q. That is the best of your recollection?

A. To the best of my recollection, yes.

Q. Do you know whether any of them had left on that morning? A. Yes.

Q. Who?

A. Well, Stanger had left on that morning.

Q. What time?

A. I think about 1:00 o'clock on the morning of November 14.

Q. Anyone else?

A. Well, John Ray had left that morning, because this was a short trip—we always did leave right around four o'clock in the morning on the Twin Falls trip.

Q. Do you know whether those drivers came in that same day? A. Yes, they did.

Q. Did they also receive their checks?

A. Yes, sir.

Q. Did you know all the truckdrivers who were discharged on November 14? [495]

A. Yes, sir.

Q. Do you know whether or not there were some who had never had accidents?

A. Yes, sir.

Q. Do you know which ones?

Mr. Merrill: We object to that on the grounds that it would be merely a conclusion of the witness and would be purely hearsay.

Mr. Penfield: He may know.

(Testimony of John Evans.)

Mr. Merrill: Except as to himself.

Mr. Penfield: He knows all the drivers.

Mr. Merrill: Well, he would have to get the information from them.

Trial Examiner Riemer: I will take it for what it is worth.

Mr. Penfield: I understood that the Examiner wanted to get some information——

Trial Examiner Riemer: I will hear him as to what he knows about the others. Repeat the question.

(Last question read by the reporter.)

A. Yes, most of them.

Trial Examiner Riemer: I don't think that you understood, Mr. Witness. Mr. Penfield wants to know which of the drivers never had any accidents, if you know?

The Witness: I could tell you the ones that never had an accident after I went to work there.

[496]

Mr. Penfield: That's right, that's all that you can testify to.

The Witness: But I could not testify what they had done before I came to work for the company.

Q. (Mr. Penfield, continuing) And you have testified that you went to work on what date?

A. On September 20, 1939.

Q. Well, I show you Board's Exhibit 3, which purports to be a list of drivers with the periods that they began work, and ask if you can tell

(Testimony of John Evans.)

me which of the drivers appearing on that list never had an accident?

Mr. Merrill: May our objection go to this whole line of interrogation?

Trial Examiner Riemer: Let the record show an objection to the entire line of inquiry, and an exception to my ruling.

A. Well, here the first one is James Ayers, and S. R. Burkholder—I will withdraw S. R. Burkholder, there is a question in my mind about him; K. C. Brower, Guy Campbell, Howard Davis, Arthur Heckert, Carl Hill, John Ray, Leland Stanford, and R. E. Miller.

Q. Did any of those persons you named come to work for the Company before you did?

A. Yes.

Q. Which ones?

A. James Ayers was there, and Victor Ellingford. [497]

Q. You didn't testify that he never had an accident? A. No.

Q. I mean the ones that you testified who had never had an accident?

A. James Ayers was there before I was. He is an older man than I was, but as far as I know, he never had an accident.

Q. Well, these are the dates on which they came to work.

A. I think all the rest of them I named were younger men than I was. [498]

(Testimony of John Evans.)

Q. Do you recall a conversation with Mr. Henninger in the early part of December, 1941?

A. Yes, sir.

Q. Who is Mr. Henninger?

A. He is the dock foreman, and also the truck dispatcher.

Q. Where did this conversation occur?

A. In the loading dock.

Q. Who else was present?

A. No one—myself and Mr. Henninger.

Q. Will you tell us what the substance of this conversation was?

A. Well, we were sitting in there, just the two of us, and we were talking about the drivers being fired, and Mr. Henninger told me that it was sure too bad the way it happened, the [502] insurance being cancelled, and all of us being out of a job. And I told him that I knew better than that, that it wasn't—that our discharge wasn't caused from the cancellation of insurance, that we was fired because we joined the union. He kind of hung his head and studied a little bit, and he said, "Well, maybe you are right." He said, "I knew you fellows belonged to the union a long time before you were fired." He said, "I found it out during the hunting season over at Jerome and Twin Falls, through that country, through some of the service station operators." He also said that Gilbert Moyle and Mr. Copening had found it out through the same sources over there about the same time. I told him that I intended to take it a little further and prove that it wasn't insurance.

(Testimony of John Evans.)

Q. When was the hunting season in 1941?

A. The hunting season starts in along about, shortly after the first of September, and last up until the latter part of December.

Trial Examiner Riemer: I don't think that the witness has placed the time of this conversation.

Mr. Penfield: I believe that he has placed the date. You mean the hour of the day?

Trial Examiner Riemer: The time of the alleged conversation with Henninger.

Mr. Penfield: In the early part of December, 1941. [503]

Cross Examination

Q. (Mr. Merrill) When did you commence working for the refinery company?

A. September 20, 1939.

Q. Most of the men of whom you spoke and whose names you have mentioned, commenced work after you did, I believe?

A. The majority of them, yes, sir.

Q. As a matter of fact, there were several of them on the extra list, were there not?

A. There were a few. [506]

Q. After the change in the method and rate of pay in June, 1941, your salaries were fixed, I understand, at \$160 a month? A. Yes, sir.

Q. And you felt that that was not satisfactory?

A. Yes, sir.

Q. You always felt that was unsatisfactory?

A. Was unsatisfactory, yes.

(Testimony of John Evans.)

Q. You presented a proposed agreement to the company with the same rate, though, didn't you?

A. No, sir.

Q. Now, you have mentioned individuals who did not have accidents. Who did have accidents? Will you give us those names?

A. H. H. Hendrickson had an accident while I was there.

Q. Where did he have that?

A. Malta, Idaho.

Q. What kind of an accident was it?

A. Traffic accident.

Q. When did it occur, if you know?

A. I couldn't say the date on it, but I believe that it was in November.

Q. Rather a serious accident, was it not?

A. Yes.

Q. Who else had an accident?

A. Buck Whitesides had an accident. [507]

Q. Where did his accident occur?

A. I never did know for sure about that. It was down along Layton, Utah, somewhere.

Q. That was when?

A. That was in the fall of 1941.

Q. Of 1941? A. 1941.

Q. That, too, was a very serious accident?

A. Yes, sir.

Q. Upwards of several thousand dollars in expense? A. I couldn't say to that.

Q. Well, who else had had an accident?

A. Stanley Merrill had had an accident.

(Testimony of John Evans.)

Q. Where did he have his accident?

A. Boise, Idaho.

Q. Is that "Sandy" or Stanley?

A. Stanley.

Q. When did he have his accident?

A. That was in the spring of 1940, to the best of my recollection.

Q. 1940 or 1941?

A. Maybe it was 1941,—it could have been.

Q. Yes. Who else had had an accident?

A. Bob Patterson had an accident a few days before we were laid off.

Q. Where did he have his accident? [508]

A. Four miles west of Glenns Ferry.

Q. What did that accident consist of?

A. He ran off the road into the borrow-pit and turned over.

Q. And rather demolished the property?

A. Part of it, yes.

Q. That was a rather serious accident?

A. Yes.

Q. When was that with reference to the 14th of November?

A. I would say that it happened around pretty close to the first of November.

Q. As a matter of fact, it was the 5th, wasn't it?

A. I could not say as to the date, but it was around about that time.

Q. Who else had had an accident?

A. I understood Vic Ellingford had an accident before I came to work.

(Testimony of John Evans.)

Q. Do you know when Vic Ellingford had an accident?

A. No, sir; I couldn't testify to that.

Q. Do you remember the accident he had four miles west of Burley on September 6, 1941?

A. No, I don't.

Q. You don't know that he had an accident on that date? A. No.

Q. Who else of these men have had accidents?

A. It seems to me that Pat Burkholder had a little accident on [509] Malad Hill when the truck slid off in the borrow-pit.

Q. That was a serious accident, too, wasn't it?

A. I don't know. I was living at Jerome at the time, and I don't know much about it.

Q. Who else of these men had accidents?

A. Well, I couldn't say.

Q. What about Boyd Cornia?

A. The only accident that I know of that Boyd Cornia had, while I was working here, he run off the road over here at the Snake River Bridge, this side of Rupert.

Q. And demolished the property? A. No.

Q. It was a rather expensive loss, wasn't it?

A. No.

Q. \$2500 as a matter of fact?

A. No, not the one that I am thinking of.

Trial Examiner Riemer: Demolished the bridge or the truck?

The Witness: He didn't demolish anything.

(Testimony of John Evans.)

Q. (Mr. Merrill, continuing): Do you know what accident he had on May 15, 1941?

A. No, sir.

Q. Then he may have had two accidents.

A. He might have, I couldn't say as to that.

Q. Do you recall any other accidents?

A. No, sir. [510]

Q. Do you recall the accident of Wayne Douglas?
A. Yes, sir.

Q. When did that occur?

A. That occurred in the summer of 1941.

Q. As a matter of fact, didn't he also have an accident on October 16, 1941?

A. Well, I don't know about the dates. The only accident that I remember of Wayne Douglas having is one in Weiser.

Q. Weiser, Idaho, he wrecked his truck?

A. Yes.

Q. That was rather a serious accident?

A. Yes.

Q. Would you say that the middle of October, 1941, was about the right time?

A. Well, it was around there somewhere. I couldn't remember the exact date.

Q. Myron Whitesides—have you mentioned him?

A. Yes.

Q. He had the accident in Layton, Utah?

A. Yes.

Q. That too was a serious accident?

A. Yes. [511]

(Testimony of John Evans.)

Q. And you have mentioned Bob Patterson as having had an accident? A. Yes.

Q. And you have mentioned Myron Whitesides as having had accidents, haven't you?

A. Yes, sir.

Q. Now, you remember then at least eight of the group that have had accidents, don't you?

A. Yes, sir.

Q. Now, isn't it true, Mr. Evans, that the truck drivers were frequently called and warned about accidents?

A. I couldn't say to that. I never was.

Q. Didn't you ever sit in at hearings where a member of the company told the truckdrivers that it would be necessary for them to be more careful?

A. I have been to safety meetings, yes, and I have heard them cautioned to drive carefully.

Q. Were you in attendance at a meeting one time when you were told that the insurance would be cancelled if more caution was not exercised?

A. No, sir.

Q. Did Mr. Rice tell you that? A. No, sir.

Q. Haven't you heard from others that that was the fact?

A. I might have heard it—just hearsay. [514]

Q. Haven't other truckdrivers mentioned it to you? A. I can't say they have.

Q. Well, have they? Do you remember?

A. I wouldn't say they have.

Q. And you wouldn't say they haven't?

(Testimony of John Evans.)

A. No, I wouldn't say that they haven't.

Q. You know that before the discharge, there was some danger of the insurance being cancelled?

A. No.

Q. Nobody ever mentioned that to you?

A. No.

Q. How long had you lived here near the refinery, prior to November 14?

A. Let's see, I moved back from Jerome on the 10th of June out to the refinery there, and I lived there from then to the time we were fired.

Q. After the 10th of June, you were away for a while?

A. No, before the 10th of June, from the latter part of October in 1940 until the 10th of June in 1941, I lived in Jerome Idaho.

Q. Did Mr. Gilbert Moyle ever talk to the truck-drivers? A. I guess he did.

Q. Were you present at the meeting?

A. Never but one.

Q. And he told you then to be more careful?

[515]

A. No, sir.

Q. Did he speak of the care necessary to be exercised in driving these trucks? A. No, sir.

Q. Were you present when agents of the insurance company addressed them?

A. At one meeting.

Q. When was that?

A. I don't just remember, but it was a meeting held in the change room a short time after the

(Testimony of John Evans.)

change room was completed and two of the insurance company representatives were here, I believe, from Salt Lake.

Trial Examiner Riemer: Would you read me that answer?

(Whereupon the answer referred to was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): And it was discussed with the truck drivers, the danger of these accidents?

A. They didn't at that meeting. The insurance company representatives did not in any way criticize the drivers on their driving.

Q. Did they not explain the necessity of careful driving? A. Yes, sir.

Q. Did they make any comment as to what would happen if careful driving was not engaged in?

A. No, sir. [516]

Q. As a matter of fact, you knew soon after you got out there that morning, did you not, that you were laid off because of this insurance difficulty?

A. Well, I heard it through hearsay, through the rest of the drivers.

Q. Yes, that is what I wanted to know, the drivers were discussing it with you, telling you that you were all laid off because the insurance had been cancelled upon the trucks?

A. That wasn't exactly the topic of conversation.

Q. I am asking you if you were not told by some of the drivers at least during that waiting period, that you had been laid off because of that?

(Testimony of John Evans.)

A. We were told that, yes.

Q. Who told you?

A. It was just talked about among the bunch.

Q. So, when you received your check, you knew the reason for your lay-off? A. Yes, sir. [519]

Q. When you went up to join the Union, did Mr. Archibald go with you? A. No.

Q. Did Mr. Archibald have anything to do with your interest in this matter? A. No.

Q. He had never tried to organize you?

A. No.

Q. Nor any of the other drivers, so far as you know?

A. I know that he was collecting some of the initiation fees.

Q. He never passed out to you any applications?

A. No, sir.

Q. He never collected any initiation fee from you? A. No.

Q. You never saw him pass out any application to any of the drivers? A. I didn't.

Q. And you did not see him collect initiation fees from any other driver? A. I did not.

Q. And when you went up to make your application, he wasn't around? A. No, sir. [522]

Q. And some other drivers were with you?

A. Just two.

Q. Did you see any other drivers up there then?

A. Not at that time, no. [523]

Mr. Merrill: I beg your pardon.

(Testimony of John Evans.)

Q. (Mr. Merrill, continuing): The conversation that you had with Mr. Henninger on December 11, 1941, at which you were offered re-employment by the company was before the conversation that you have been speaking about in which you discussed with Henninger the reason for the discharge?

A. Yes.

Q. Now, directing your attention to the discussion with Mr. Henninger on December 11——

A. That's right—1941.

Q. ——1941, he then told you that the company would give you employment at the same rate per hour you had been receiving prior to the change-over to a monthly wage on the trucks, didn't he?

A. No, sir.

Q. What did he tell you?

A. It was a \$24 a week job.

Q. Did you not tell him then that the union representatives had advised you not to accept any employment if offered?

A. I didn't tell Henninger that, no, sir.

Q. What did you tell him about what the Union representatives told you?

A. The unions didn't tell me anything about whether I could go to work or not. They had advised some of the other boys [533] before that.

Q. Not to go to work?

A. Not to go to work.

Q. But they hadn't advised you?

A. No, sir.

Q. Did you tell Henninger that?

(Testimony of John Evans.)

A. Yes, sir.

Q. Did Henninger make any mention of the fact that the unions were opposed to your going to work?

A. Yes, sir.

Q. Did you tell him that you knew that?

A. I did.

Q. And why were they opposing your going to work?

A. Because it was not the same job that we were fired off of.

Q. Yes, and as a matter of fact, wasn't it mentioned there that the union officials told you that they thought it might hurt your case before the Labor Board if you accepted employment?

A. That is what Mr. Brandt told us, yes.

Q. So you refused employment of any other kind or character because Mr. Brandt told you not to go to work?

A. I didn't, no, sir.

Q. Others did?

A. I couldn't say; I couldn't speak for the others.

Q. As a matter of fact, you told him that Mr. Brandt had [534] given that information?

A. Yes.

Q. Wasn't that one of the reasons that you refused employment when Mr. Henninger suggested that the company would give you additional employment?

A. No.

Q. You didn't accept that employment?

A. No.

(Testimony of John Evans.)

Q. Did you tell Henninger that is the reason that you wouldn't accept it? A. No.

Q. Did you tell Henninger why you wouldn't accept employment? A. I did.

Q. What did you tell him?

A. I told him that I wouldn't go back to work and start at the bottom of the list after I had been there two years and a half, and start again at \$24 a week. I told him that if he would give me a job anywhere in the plant that would equal \$160 a month, I would take it in a minute.

Q. Irrespective of whether it was driving or not?

A. Anything.

Q. Isn't it a fact that he offered you a job that paid you 60 cents an hour, which was the same amount that you had been receiving prior to the changeover to the monthly basis?

A. I don't recall what the hourly basis was, but Mr. Henninger [535] told me that it would amount to about \$24 a week.

Q. Now, you say that you had a conversation with him later in December? A. Yes, sir.

Q. I withdraw that. Did you belong to the union at the time that Mr. Henninger offered you that job? A. I did. [536]

Q. That was all he said at that moment with respect to that? A. That was, yes, sir.

Q. Did they have more jobs in the winter than in the summer?

A. No, they had more in the summertime than in the winter.

(Testimony of John Evans.)

Q. All right, then, it would be possible that some of these drivers would be turned out, anyway, wouldn't it? A. Well, it is possible.

Q. After Mr. Henninger made that comment, what further comment did he make?

A. Well, not any for a little bit.

Q. I believe that you mentioned the fact that a couple of the drivers had been—I don't know what word you used—had been talking to various other station operators?

A. That is what he told me, yes.

Q. Henninger told you that? A. Yes.

Q. Who did he mention?

A. Stanley Merrill and Buck Whitesides.

Q. When you say that Mr. Henninger told you why you had been laid off, what did you say?

A. I told him that I knew better than that, that we were not fired because of the cancellation of insurance, but because of union activities.

Q. When you say that Mr. Henninger told you why you had been laid off, what did you say? [538]

A. I told him that I knew better than that, that we were not fired because of the cancellation of insurance, but because of union activities.

Q. You didn't get any such information from any officer or supervisory employee of the company?

A. No, sir.

Q. That was just your own conclusion?

A. Partly.

Q. You didn't get any such information from the company—— A. No.

(Testimony of John Evans.)

Q. —or any officer or supervisory employee of the company? A. No. [539]

Q. (Mr. Merrill): When you say Mr. Henninger told you this, who was present?

A. No one.

Q. Just you and Henninger?

A. That is right, yes, sir.

Q. And it was on the loading dock, you say?

A. Yes, sir.

Q. And at the refining company?

A. Yes, sir.

Q. Sometime after the 11th of December?

A. Yes, sir.

Q. But you made no note of that date?

A. No.

Q. And no note of the conversation?

A. No.

Q. But you did make the note of the previous conversation that you testified to?

A. Yes. [545]

Q. Did you ever go out there with Boyd Cornia?

A. Yes, I did.

Q. It wasn't at that time, then? A. No.

Q. Where did Mr. Henninger say that he had been hunting?

A. Over in the Jerome country, around Jerome and Twin Falls. He didn't specify any certain place.

Q. Did he tell you that he had been hunting over in that country?

A. He said during the hunting season. He didn't

(Testimony of John Evans.)

say that he had been hunting, but I imagine he had, by his remarks.

Q. And that, you say, was over in the Jerome country? A. Yes, sir. [546]

Q. (Mr. Merrill, continuing): Now, I believe you said that you never had an accident?

A. That's right.

Q. Do you recall an accident that you had at Kraft's Crossing at the Kraft Cheese Company?

A. I do.

Q. So you did have an accident?

A. Not to my fault.

Q. Well, I am not asking you that, I am asking you if you didn't have an accident?

A. Well, I guess that you could call it an accident.

Q. Well, there was damage to equipment, wasn't there? A. Slight, yes.

Q. When was that?

A. Well, it was early in the fall, shortly before we were laid off.

Q. Yes. Now, was it September or October, or November?

A. I couldn't say. It was either September or October, I don't know which.

Q. In 1941? A. That's right.

Q. And you had an accident to equipment there at the crossing, at the Kraft Cheese Company, which was just a few rods [548] from the refining company line? Isn't it?

(Testimony of John Evans.)

A. Well, I don't know where the line is. It was out on the highway after I crossed the railroad tracks.

Mr. Moyle: May I interrupt at this point. It has occurred to us several times during the hearing in connection with the location of things, that it might be helpful if the Examiner had a view of the premises. I don't know what your wishes are, but if you wish, we would be very glad to furnish transportation for you and the Board's attorneys at any time.

Trial Examiner Riemer: I may avail myself of that privilege before the hearing is over.

Read the last question and answer.

(Thereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): Now, the Kraft Cheese property joins the Idaho Refining Company property to the south, doesn't it?

A. Well, as I say, I couldn't say to that.

Q. Well, it is the first business property to the south of the Idaho Refining Company?

A. That's right.

Q. And you leave the Idaho Refining Company and you come by the Kraft Cheese Company?

A. Yes.

Q. Then you make the turn to the east and cross the railroad [549] track? A. Yes.

Q. Then you get onto the main highway?

(Testimony of John Evans.)

A. Yes.

Q. And the place where you enter the main highway is possibly 80 rods from the Refining Company property, isn't it? A. About that, yes.

Q. Now, you had your accident there when you got off onto the highway? A. Yes.

Q. Of what did it consist?

A. Broke the tongue out of the trailer.

Q. Then what happened? A. That's all.

Q. That held you up for some time?

A. About four hours, I think.

Q. Were there any accidents to other traffic that came along? A. No, sir; not to my knowledge.

Q. And that occurred in September or October?

A. Yes.

Q. Of 1941? A. Yes.

Q. Have you any other suggestions that you care to make touching that accident?

A. Yes. [550]

Q. What is it?

A. I would like to explain how it occurred.

Q. Yes, sir.

A. I would say that I left—that the truck had been serviced that night, and it had a lock on the fifth wheel, the pin that dropped through, and whoever greased or serviced the truck put this pin in there to back it out of the garage, and he left that pin in, and skidded the truck all over the yard taking it to the loading dock to load it, with the fifth wheel locked, and they loaded it that way, and

(Testimony of John Evans.)

spotted it out in the yard for me. I came out in the dark, in the night, and got in this truck, checked my tires and lights and water in the radiator and everything and got in the truck and drove out, and when I came to turn over the railroad track to come up this way towards town, the fifth wheel was locked and completely twisted the tongue out of the trailer.

Q. Couldn't you tell that the fifth wheel was locked when you were in the yard?

A. I thought something was wrong. I stopped twice by the Refinery office, and the Kraft Cheese Company, and went around with a flashlight, trying to find out what was the matter.

Q. Why couldn't you find out what was the matter?

A. Well, it just didn't show up in the dark with the flashlight. I knew it acted like something, the brakes were dragging or— [551]

Q. (Trial Examiner Riemer) What is a fifth wheel?

A. It is the turntable on the front wheels of a trailer, set on so it gives the front wheels room to turn.

Q. It has nothing to do with a separate wheel?

A. No.

Q. The fifth wheel is your descriptive term for that turntable which is in back of the truck proper and upon which the trailer rests?

A. You see, this was a four-wheel trailer. It

(Testimony of John Evans.)

is just the same principle as a wagon, to let the front wheels—it is a four-wheel trailer behind a truck.

Trial Examiner Riemer: I think I understand.

Q. (Mr. Merrill, continuing) You didn't go back to the garage for a mechanic when you thought something was wrong?

A. No, sir.

Q. But just continued on?

A. That's right. There was no mechanic at the garage.

Q. None at the garage there?

A. No, sir; not at that time of the morning.

Q. Trial Examiner Riemer: What time was it?

A. About four o'clock in the morning.

Q. (Mr. Merrill) Did you look to see if there was a mechanic there?

A. Yes, I was in the garage before I left.

Q. You had another accident near here, too, didn't you, at [552] another time?

A. I don't remember.

Q. You don't remember, at the same crossing?

A. Oh, I had a truck jack-knife with me out there on the ice the winter before that.

Q. So that was the second accident you had?

A. Yes.

Q. That truck jack-knifed—what damage did that cause?

A. I think it broke an air line.

Q. What is an air line?

A. It is the line that connects the air from the truck to the trailer brakes.

(Testimony of John Evans.)

Q. That delayed you for some time?

A. No, sir.

Q. Was that in the daytime?

A. No, it was early in the evening.

Q. How early?

A. Oh, I would say about eight o'clock.

Q. So at least there were two accidents that you were involved in, that is to say, to equipment, when you were driving?

A. Yes, sir.

Q. Do you remember any more?

A. No.

Q. Now, when Mr. Henninger offered you re-employment at the plant on December 11, 1941, the rate of pay was 60 cents an hour, time and a half for overtime over 8 hours—over 40 [553] hours a week?

A. I don't know.

Q. You knew that was the basis of pay for labor in that type of service?

A. No, I didn't.

Q. Did you refuse the job without inquiring into that?

A. No, I didn't.

Q. Did you inquire into it?

A. Only Mr. Henninger told me that it would amount to \$25 a week. He didn't say about the hours.

Q. That was the basic pay?

A. Yes.

Q. You understood that it was time and a half for all hours over 40 hours per week?

A. No, that was the only way wages was discussed. I asked him how much, and he told me.

Q. You knew when you were working on the

(Testimony of John Evans.)

hourly basis with these trucks, you received a basic pay, basis of 40 hours a week, with time and a half for overtime over that? A. Yes, sir.

Q. And that was always the case?

A. On the trucks, yes.

Q. But you made no effort to make further inquiry from Mr. Henninger as to what pay it would really amount to? A. No. [554]

Q. You testified in regard to two accidents involving yourself—

Trial Examiner Riemer: I think that those have been sufficiently explained, Mr. Penfield, unless you have something else.

Mr. Penfield: Well, all right.

Q. (Mr. Penfield, continuing) Were any insurance claims paid on these accidents, if you know?

A. Of mine?

Q. Yes.

A. No, sir; not to my knowledge. [564]

Q. Did Mr. Henninger or anyone else connected with the company ever offer you a job as a truck-driver? A. No, sir.

Q. What was the job that they did offer you?

A. On the loading dock. [565]

Q. (Trial Examiner Riemer) Then with exception of Douglas, it is your testimony that all the truckdrivers were discharged on November 14?

A. With exception of Douglas and Patterson.

Q. Patterson having been previously discharged?

A. Yes.

(Testimony of John Evans.)

Q. And Whitesides having been previously discharged?

A. No, Whitesides was discharged on the 14th of November.

Q. He was discharged on the 14th of November?
[571]

A. That's right.

Q. Were there any truck drivers who were members of the Union who were not discharged, Mr. Evans?

A. No, sir.

Q. Mr. Evans, while you were employed by the Idaho Refining Company, did you as a truckdriver attend safety meetings?

A. Only one.

Q. Only one? A. That's right.

Q. Do you, as a matter of personal knowledge, know whether the Company sponsored safety meetings for truck drivers?

A. Well, they had safety meetings, but it always happened that I was out of town.

Q. Did these meetings occur with any regularity?

A. No, they didn't.

Q. Was there any plan or practice for regular holding of safety meetings for truckdrivers?

A. There was not.

Q. You know of no such plan?

A. I know of no such arrangements, no. [572]

Q. Do you know James Taylor?

A. I know of them. I don't know them personally.

Q. Or Loren McBride?

(Testimony of John Evans.)

A. I know him, yes, sir.

Q. He was a member of your Union?

A. Not of our union.

Q. But of another Local?

A. Yes, over in Baker, Oregon.

Q. Frank Woodland?

A. I just know the name—

Q. Or Cliff Kauffman?

A. Yes, I know him.

Q. He was a member of the union?

A. Yes.

Q. None of those men were discharged that day?

A. They were not in this crowd.

Q. They were in what is known as the West End?
A. They were working for Mr. Stiff.

Q. They were working on the West End from Boise to the River, west?

A. I don't know what they called it.

Q. You know that they were working on the west end?

A. They were working in Baker, Oregon.

Q. That is where Wayne Douglas was working?

A. Yes. [578]

Q. Wayne Douglas, you say, was later discharged?
A. Yes.

Q. You know that he had a serious accident over at Weiser?
A. Yes.

Q. And that was after the 14th of November?

A. It was before the 14th of November?

(Testimony of John Evans.)

Q. Do you know when?

A. No, I couldn't say.

Mr. Penfield: Are you referring to the discharge or the accident?

Mr. Merrill: I am referring to the accident.

Q. (Mr. Merrill, continuing) Now, all these men whose names I have read—five—and Wayne Douglas, making six, were all union men?

A. Yes, sir.

Q. And none of them was discharged on the 14th of November, was he?

A. Not to my knowledge, no. [579]

WAYNE DOUGLAS

was thereupon called as a witness, and, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. (Mr. Riemer, Trial Examiner) State your name for the record, please?

A. Wayne Douglas.

Q. Where do you live?

A. Elko, Nevada.

Q. (Mr. Penfield) Where are you employed?

A. I drive for Cotant Truck Lines.

Trial Examiner Riemer: Will you try to speak as loudly as you can? It is very difficult to hear you, and if we don't get your answers, we have to ask you to repeat them and it takes up a lot of

(Testimony of Wayne Douglas.)

time and makes the record choppy, so keep your voice up, please.

Q. (Mr. Penfield, continuing) Have you ever worked for the Idaho Refining Company?

A. Yes.

Q. In what capacity?

A. As a driver. [582]

Q. When did you first commence work as a driver for the company?

A. Well, it was about, right around January 5 of 1940.

Q. How long did you continue?

A. I worked until about August—it was either August or September in 1940, then I was laid off.

Q. Why were you laid off?

A. Well, I wasn't 21 years old, and they came under the ICC or something, and they had to lay me off until I was 21.

Q. Were you ever re-employed?

A. Yes, in 1941—it was about the first of August in 1941.

Q. Was this after you had become 21?

A. Yes.

Q. How much after?

A. I was 21 on April 13, 1941.

Q. Who hired you when you first went to work for the Company? A. Kermit Rice.

Q. Who hired you after you went back the second time? A. Kermit Rice.

(Testimony of Wayne Douglas.)

Q. After you commenced work in August, 1941, did you work out of Pocatello?

A. No, I worked out of Baker, Oregon.

Q. Did you work at all out of Pocatello at the time that you commenced work?

A. Not when I first started, no. [583]

Q. Under whom did you work in Baker, Oregon?

A. Earl Stiff, he was the truck foreman over there.

Q. Who was Earl Stiff?

A. He has some service stations over there, and he has some trucks of his own, or did have, I don't know how it was, and he took care of the Idaho Refiners that was over there.

Q. Do you mean that he handled oil for the Idaho Refining Company?

A. Well, I don't know anything about how their dealings was.

Q. Did he have his own trucks?

A. I know at one time they were his. I don't know whether they were then or not.

Q. Did he operate any trucks that were owned by the Idaho Refining Company?

A. Well, he took care of that one truck over there of the Idaho Refiners.

Q. You know that there was one truck owned by the Idaho Refining Company there?

A. Yes.

(Testimony of Wayne Douglas.)

Q. Did you drive that truck? A. Yes.
[584]

Q. What was the date of your discharge?

A. Well, I don't know whether you would call it discharged, when I came back from Baker or when I got here.

Q. When did you terminate your employment?

A. It was about the 24th of October—or November.

Q. The 24th— A. —of November.

Q. You are not sure of that date?

A. No, I am not sure.

Q. Could it have been the 26th?

A. It could be.

Q. Between the date you commenced work for the company for the second time, and the date of the termination of your employment, did you work continuously out of Baker in the manner you have just described?

A. No, I was back over at Pocatello, once.

Q. When was that?

A. Well, I believe that it was in September some time.

Q. In September? [589]

A. I believe it was. I am not sure of that, either.

Q. The first or latter part of September?

A. Well, I don't know whether it was the first or the last.

Q. What is your best recollection?

(Testimony of Wayne Douglas.)

A. I am pretty sure that it was in September, that's all; I don't know when.

Q. How long did you work in Pocatello?

A. Well, two or three weeks, then I went back.

Q. And during this two or three weeks, were you doing the same sort of work that the other drivers were?

A. At the same as the other drivers in Pocatello.

Q. You were getting your assignments from the Refinery out here? A. Yes.

Q. Were you driving the same truck as you were driving in Baker?

A. I was driving it, and the other crew were, too.

Q. Who brought this truck down?

A. I brought it to Boise, and Johnny Evans brought it from Boise to Pocatello.

Q. At whose instructions did you come to Pocatello?

A. Well, I believe Earl Stiff told me to come to Pocatello.

Q. Now, when you came to Pocatello, whom did you work under? A. Kermit Rice.

Q. Did you ever join Local 440 of the Teamsters? [590] A. Yes.

Q. I show you Board's Exhibit 5-F and ask you if you can tell me what that is?

A. That is an application blank for the Teamsters' Union 440

(Testimony of Wayne Douglas.)

Q. Is that your signature on it?

A. Yes, sir.

Q. It is dated 9-29-41, is that the date on which you signed it? A. Yes.

Q. At that time, were you driving here at the Pocatello Refinery? A. Yes.

Q. You testified that you drove for the Pocatello Refinery about three weeks some time in September.

What happened at the conclusion of that period?

A. Well, the truck went back to Baker, and I got to go back with the truck.

Q. Who told you to go back to Baker?

A. Well, the way it happened, I went to Boise, and when I got to Boise, Dick Sheppard told me to go on to Baker.

Q. Who is Dick Sheppard?

A. He is the Manager of the Idaho Gas & Oil Company at Boise.

Q. (Trial Examiner Riemer) When was this, please?

Q. (Trial Examiner Riemer) When was this, [591]

A. It must have been right around the first of October.

Q. After that, you returned to Baker, did you?

A. Yes.

Q. Did you continue working as before?

A. The same as before, yes.

Q. This truck that you drove down to the Idaho

(Testimony of Wayne Douglas.)

Refining Company, or that was driven down partly by you, and that you returned, was that the same truck that you had been driving under Mr. Stiff?

A. Yes.

Q. During the time that you were employed by the Idaho Refining Company this second time, did you ever have an accident? A. Yes.

Q. When did this accident occur?

A. It was in October. I am not sure of the date.

Q. Where did it occur?

A. Weiser, Idaho.

Trial Examiner Riemer: This is 1941?

Mr. Penfield: Yes.

Q. (Mr. Penfield, continuing) At Weiser, Idaho? A. Yes.

Q. How did this accident occur?

A. Well, I was just leaving town and there was a square corner there and I got wound up, you know, was going too fast, and [592] turned over.

Q. How badly was the truck damaged?

A. Well, I wouldn't know in money, but the cab was gone and the tank was bent up pretty bad.

Q. Did you continue working for the company after that? A. Yes.

Q. Were you suspended?

A. Well, I wasn't suspended, but I was off for a week or ten days while the truck was being fixed.

Q. Did you resume work as soon as the truck was fixed? A. Yes.

(Testimony of Wayne Douglas.)

Q. Driving that same truck? A. Yes.

Q. Did you continue to drive out of Baker?

A. Yes.

Q. Whom did you report the accident to?

A. Earl Stiff.

Q. Was anything said to you by him?

A. Well, they asked me how it happened, and I told them. Mr. Moyle was there, too.

Q. (Trial Examiner Riemer) Which one?

A. Gil.

Q. (Mr. Penfield, continuing) Did anyone connected with the company threaten you with discharge at that time? A. No. [593]

Q. Did they criticize you?

A. Well, I don't know whether you could call it criticizing or not. I guess I had a lot of it coming.

Q. (Trial Examiner Riemer) What?

A. I guess I had a lot of criticizing coming, but I don't believe that they did.

Q. (Trial Examiner Riemer) But you don't believe they gave it to you? In other words, the witness expected more than he got.

Q. (Mr. Penfield, continuing) Did you hear anything about the drivers at Pocatello being discharged? A. Yes.

Q. When did you hear this?

A. Well, it was, I believe, about the 16th of November, I think that it was, or the 17th, somewhere around there, 1941.

(Testimony of Wayne Douglas.)

Q. Who told you? A. Roy Williams.

Q. Who is Roy Williams?

A. He worked on the—there at the bulk plant at Boise, Idaho, for the Idaho Gas & Oil Co.

Q. You state this was the 16th or 17th of November after the drivers had been discharged?

A. Well, it must have been, or I wouldn't have heard it.

Q. You were still driving for Earl Stiff at that time? A. Yes.

Q. Following that, did you hear anything in connection with [594] your own discharge?

A. Well, I didn't hear anything until I think November 20. Dick Sheppard called Mrs. Stiff, and she was the secretary for Earl, and told her not to let me pull any more trips and not to ask any questions.

Trial Examiner Riemer: Would you read that last question and answer, please?

(Last question and answer read by reporter.)

Mr. Moyle: We move to strike what Mr. Sheppard told Mrs. Stiff as hearsay.

Q. (Mr. Penfield, continuing) Well, will you tell us what Mrs. Stiff told you?

Mr. Moyle: May that go out?

Trial Examiner Riemer: Are you consenting to have the previous answer stricken?

Mr. Penfield: No.

Trial Examiner Riemer: The motion to strike

(Testimony of Wayne Douglas.)

is denied. I will entertain it again unless it is connected.

Q. (Mr. Penfield, continuing) Will you tell us what Mrs. Stiff told you?

A. She said for me not to pull any more trips, and not to ask any questions.

Q. Did she tell you that you were discharged?

A. No.

Q. Were you told to report to Pocatello? [595]

A. I wasn't told anything.

Q. You were told not to make any more trips?

A. Yes.

Q. What did you do?

A. Then I went to Pocatello.

Q. When did you go to Pocatello?

A. Well, about the 21 or 22 of November, right after that.

Q. What did you do when you got to Pocatello?

A. Well, I went out to the Refinery and saw Mr. Moyle.

Q. Did you see anyone else?

A. Mr. Copening.

Q. Where did you see Mr. Moyle and Mr. Copening? A. In their office.

Q. What discussion took place?

A. Well, they said that I was fired for the same reason as the rest of the drivers were, on account of the insurance was cancelled.

Q. Were any of the drivers that you have re-

(Testimony of Wayne Douglas.)

ferred to at Baker [596] members of the Teamsters? A. Yes, I believe that they all were.

Q. Were any of them members of Local 440?

A. No.

Q. Were you the only member of Local 440?

A. The only one.

Q. Were these other men discharged?

A. No. [597]

Cross Examination

Q. You belonged to the Teamsters Union before you joined 440, did you not?

A. I had never been in the Union before that.

Q. That was your first union experience?

A. I made application, but was never in the union.

Q. What union did you make application in?

A. It was in the Railway.

Q. Didn't you make application somewhere near Baker or in the Baker territory? A. No.

Q. So that while you were driving in and out of Baker, you did not belong to the Union the first time? A. No.

Q. When you were under age?

A. I was of age then.

Mr. Penfield: He never testified that he was driving out of Baker when he was under age.

Mr. Moyle: I beg your pardon. [599]

Q. (Mr. Moyle, continuing) You drove out of Pocatello when you were under age? A. Yes.

Q. And your right age came out during the first draft, didn't it? A. Yes.

(Testimony of Wayne Douglas.)

Q. You didn't register because you were under age? A. No.

Q. And so far as the seriousness of your accident was concerned, were you loaded or unloaded when it occurred? A. Loaded.

Q. Just what happened to the equipment and its cargo?

A. Well, the equipment was—well, the cab was gone off the truck and the tank was bent up quite a bit and the gas was all gone except I believe it was 250 gallons.

Q. Well, how much gas did you have on it?

A. 4640 gallons.

Q. When you say Mr. Moyle and Mr. Copening in the company office on November 21 or 22, they discussed with you at that time the amount of the loss? A. No.

Q. Incident to the Weiser accident?

A. No.

Q. And the seriousness of it? A. No.
[600]

Q. And the amount the insurance company had had to pay out? A. No.

Q. And that it was because of this insurance loss that you were discharged?

A. Well, they told me that the reason that I was discharged was the same as the other drivers.

Q. Didn't they also tell you that it was because of the loss that you had had at Weiser?

A. No.

Q. They didn't mention that at all?

(Testimony of Wayne Douglas.)

A. No.

Q. And that is why you say you received no criticism for that accident?

Mr. Penfield: He didn't testify that he received no criticism.

Q. (Mr. Moyle, continuing) Well, substantially no criticism, not as much criticism as he deserved.

A. I didn't get any criticism at all up there.

Q. But you were discharged on November 21 because of the insurance?

A. I was discharged for the same reason that the other drivers were.

Q. So, after you had come all the way down from Baker to Pocatello and gone into Mr. Moyle's and Mr. Copening's office, what did you say when you went into the office?

A. Well, what I went in for was my check. [601]

Q. Did you say anything?

A. Well, I talked to them.

Q. What did you say?

A. Well, I asked them what it was all about.

Q. Who spoke, Mr. Moyle or Mr. Copening?

A. Mr. Moyle had a telegram there from the insurance company and he showed me the telegram.

Q. That's what I thought..

A. It said that they cancelled the insurance.

Q. He showed you the telegram cancelling the insurance?

(Testimony of Wayne Douglas.)

A. That the insurance on all the trucks was cancelled.

Q. What else did he say to you?

A. Well, that's just all there was of it.

Q. What did you say when you saw the telegram? A. There wasn't much I could say.

Q. Well, I am asking, did you say anything?

A. Well, no, I just asked for my money.

Q. You said merely "Give me my money", and your check was given you and you walked out?

A. No, they said all the time cards wasn't there, and they would have to wait until the time cards got in from Baker to pay me.

Q. And you continued on the payroll until the cards came in?

A. I wasn't making anything.

Q. I see. Well, you didn't get your check until the 26th? [602]

A. It could be the 25th or 26th, somewhere in there.

Q. You weren't paid for any time between the 10th and the 25th?

A. I wasn't paid for any time between the 20th and the 25th.

Q. Oh, it was the 20th when Mrs. Stiff told you that you were to take no more trips?

A. Yes.

Q. Now, Mr. Copening said nothing to you on that occasion?

A. Well, if he did, it was just backing up what Mr. Moyle said.

(Testimony of Wayne Douglas.)

Q. Did he say anything to you?

A. I don't remember.

Q. As far as you remember, Mr. Moyle did all the talking? A. Yes.

Q. And you have now related all of the conversation, the substance of it, as far as you can remember it? A. Yes.

Q. And during this entire conversation with you in that office there was never any mention made by anybody, either you or Mr. Copening or Mr. Moyle about this Weiser accident? A. No.

Q. That is, there was not a word said about it?

A. No.

Q. Now, at that time, at this meeting with Mr. Moyle and Mr. Copening, there was nobody else present?

A. No. I saw John Peterson on the way out.

Q. I mean in the office? [603] A. No.

Q. Whose office was this, Mr. Moyle's, or Mr. Copening's? A. Mr. Moyle's.

Q. When you came to the refinery that morning, you walked right in and saw them?

A. I stood at the desk and she called him. I don't believe I saw him right then. I had to wait a while.

Q. How long did you wait?

A. Oh, possibly an hour.

Q. Then you went in and saw Mr. Moyle and Mr. Copening? A. Yes.

Q. And during that conversation, Mr. Moyle

(Testimony of Wayne Douglas.)

didn't mention the discharge of any other drivers, did he, at all?

A. Well, the telegram said that our insurance was cancelled, so that would naturally be all of us.

Q. But as far as Mr. Moyle's conversation with you was concerned, he didn't say anything to you about any other drivers, isn't that the fact?

A. Well, we didn't talk about the other drivers.

Q. Well, there wasn't anything said in that conversation about any other drivers, was there?

A. There was nothing said, but it was on the telegram.

Q. I see, so the only thing that you saw, or that was said to you, was concerning this telegram?

A. The only thing that was said to me was concerning me, that [604] I was discharged on account of the insurance company.

Q. On account of that telegram.

A. Because the insurance was cancelled.

Q. There was nothing said by anybody about any other drivers? A. None in particular.

Trial Examiner Riemer: Anything further?

Mr. Moyle: No. I think that is all.

Redirect Examination

Q. (Mr. Penfield) You have testified that Mr. Moyle and Mr. Copening informed you that you were being discharged because of the cancellation of the insurance, is that correct? A. Yes.

Q. And you testified that they showed you a telegram? A. Yes.

(Testimony of Wayne Douglas.)

Q. Do you recall when that telegram was dated?

A. Well, I believe that it was November 13 or right there some place. I am not positive of that.

Mr. Penfield: Counsel, can you produce a copy of the telegram?

Mr. Moyle: We have the original at the refinery. I will produce it as a part of our case, or sooner, if it is desired.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Penfield, continuing) I show you a document which purports to be a copy of a Western Union telegram and ask you if you can identify that? [605]

A. Yes, I believe that is the same copy.

Q. Is that the copy which was shown you by Mr. Moyle and Mr. Copening? A. Yes.

Mr. Moyle: I would like to say for the sake of the record that there can't be any issue to it. There is only one wire of this kind.

Q. (Mr. Penfield, continuing) Does any date appear on that? A. Yes, November 17.

Q. Does the date of sending appear?

Mr. Moyle: The telegram speaks for itself. I don't know the purpose of the examination, but the telegram speaks for itself.

A. No, there is no date on it.

Mr. Penfield: I just want to get into the record the date of sending.

Trial Examiner Riemer: What is the date?

(Testimony of Wayne Douglas.)

Q. (Mr. Penfield, continuing) What does that say?

A. Oh, "Salt Lake City Utah", November 10. That would be the date.

Trial Examiner Riemer: There is too much talk. Identify this thing, move its admission, and let's get on.

Mr. Penfield: Well, I will offer this as Board's Exhibit 22.

Trial Examiner Riemer: Do you have any objection?

Mr. Moyle: No, there is no objection. [606]

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 22.

(Whereupon the document hereinabove referred to was marked and admitted as Board's Exhibit 22.)

BOARD'S EXHIBIT No. 22

WESTERN UNION TELEGRAM

WUB30 49 7 Extra D1—

Salt Lake City Utah Nov 10 448P

Idaho Refining Co—

Due to High Loss Ratio Experienced on Equipment Owned by Your Corporation for Past Few Years We Are Cancelling Off Policy FM 227 By Registered Cancellation Notice To Be Effective No-

(Testimony of Wayne Douglas.)

vember 17. 1941, Noon Standard Time. Please
Make Other Arrangements For Insurance—

Firemens Insurance Co of New-
ark New Jersey and Metropoli-
tan Casualty Co of New York
New York.

FM 227 17 1941. 518P S30WUB WUB 30

Q. (Trial Examiner Riemer) Do you know
how other truckdrivers at Baker, Oregon, were
paid? A. By check.

Q. Whose check was it?

A. Idaho Refining Company.

Q. How do you know that? How do you know
that they were checks of the Idaho Refining Com-
pany? A. They got the same checks I did.

Q. Did you see them? A. Yes.

Q. Were these men paid at the same time you
were paid? A. Yes.

Trial Examiner Riemer: Thank you. Is the
witness excused? You may step down.

(Witness excused.)

Mr. Penfield: I will call Mr. Heckert.

ARTHUR LEROY HECKERT

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your full name, please. [607]

The Witness: Arthur LeRoy Heckert.

Q. (Trial Examiner Riemer): Where do you live? A. Pocatello, Idaho.

Direct Examination

By Mr. Penfield:

Q. Where are you employed, Mr. Heckert?

A. I am employed in the Ordinance Plant of the United States Navy.

Q. In what capacity? A. Truckdriver.

Q. Did you ever work for the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truckdriver.

Q. When did you commence work for the company? A. February 27, 1940.

Q. When was your employment terminated?

A. November 14, 1941.

Q. Who hired you? A. Mr. Arch Webb.

Q. Who is Mr. Webb?

A. He was assistant superintendent, I believe, of the Refinery.

Q. Prior to being hired, did you make any test run? A. Yes.

Q. With whom? A. Kermit Rice. [608]

Q. Who is Mr. Rice? A. Truck foreman.

(Testimony of Arthur Leroy Heckert.)

Q. During that test run, did you have any conversation with Mr. Rice? A. Yes.

Q. What was this conversation?

A. Well, he asked me if I belonged to any union, and I says "No", and he says, "Well, that is okeh." He said, "Mr. Moyle is strictly against union."

Q. How long was that test run?

A. It was about eight miles, six or eight miles.

Q. Six or eight miles from where?

A. We went from the refinery out to the airport and back to the refinery.

Q. And after you got back to the refinery, what did you do?

A. I went back into the office, and Mr. Webb gave me an application blank to fill out.

Q. When did you go to work?

A. As near as I can remember, about three or four weeks later.

Q. Do you know how it happened that you did not go to work immediately?

A. Mr. Rice said he didn't need any drivers right then, but as soon as they did, I would get a job he was sure.

Q. Did you receive a call from Mr. Rice?

A. Mr. Webb.

Q. That was about three or four weeks later?

[609]

A. Yes.

Q. And your testimony was that you went to work on what day?

A. About the 27th of February, 1941.

(Testimony of Arthur Leroy Heckert.)

Q. Then your conversation with Mr. Rice on the test run was three or four weeks earlier than that?

A. Yes.

Q. During the time that you were employed by the Company, were you a member of the Idaho Refining Company Benefit and Labor Association?

A. Yes, sir.

Q. At the time that you commenced work for the company, were you a member of any labor organization? A. No.

Q. Aside from the Association, did you ever join any other labor organization while you were working for the company? A. Yes, sir.

Q. What organization was that?

A. Teamster's Union, Local 440.

Q. I show you Board's Exhibit 5-K, and ask if you can tell us what it is?

A. That is an application blank of the International Brotherhood of Teamsters, Chauffeurs, Stablenen & Helpers.

Q. Is the name of the Local given?

A. Yes, sir, No. 440.

Q. Is that your signature which appears on there? [610] A. Yes, sir.

Q. When did you sign this application blank?

A. I believe it was on the 29th.

Q. Where did you sign it?

A. In Mr. Rosqvist's house.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

(Testimony of Arthur Leroy Heckert.)

Q. (Mr. Penfield): Who else was present at Mr. Rosqvist's house?

A. Mr. Burkholder and Mr. Patterson.

Q. Did they both sign application cards?

A. Yes, sir.

Q. In your presence? A. Yes, sir.

Q. Did you have a trip scheduled on November 13, 1941? A. Yes, sir.

Q. What was that trip?

A. It was a trip to Ogden, Utah.

Q. What time were you supposed to leave?

A. I was supposed to leave about 10:00 or 11:00.

Q. Is that a.m. or p.m.? A. P.M.

Q. What date? A. The 15th.

Q. Was this trip posted? A. Yes. [611]

Q. Did you see it on the board? A. Yes.

Q. Was that at the loading dock?

A. Yes, sir.

Q. What time did you see it?

A. It was about 10:00 o'clock.

Q. In the evening? A. Yes, sir.

Q. Had you been called out to the plant?

A. That's right.

Q. Who had called you?

A. I believe Heber Sheets,—Heber Sheets called me.

Q. Who was Heber Sheets?

A. He was working on the loading dock at that time.

Q. Did you make this trip? A. Yes, sir.

Q. What time did you leave?

(Testimony of Arthur Leroy Heckert.)

A. As near as I can remember, about 11:00 o'clock.

Q. On the evening of November 13?

A. Yes, sir.

Q. When did you arrive in Ogden?

A. I arrived in Ogden about five o'clock on the morning of the 14th.

Q. How did you get back from Ogden?

A. Deadheaded back with Vic Ellingford. [612]

Q. What do you mean by deadheading back?

A. Well, the evening before there was a notice on the board for I and the other extra driver in Ogden to deadhead back with Vic Ellingford. He was scheduled to bring the truck back.

Q. Is that the only thing that the notice said?

A. Yes.

Q. Was any reason given for your deadheading back?

A. No, sir.

Q. Where was Vic Ellingford?

A. In Ogden.

Q. That was on the evening of the 13th?

A. Yes, sir.

Q. Had he received any instructions?

A. No, sir.

Q. Did you convey any instructions to him?

A. Only that I and this other driver were to deadhead back with him.

Q. Who was the other driver?

A. Hank Hendrickson.

Q. Did the three of you come back in a single truck?

A. Yes.

(Testimony of Arthur Leroy Heckert.)

Q. What time did you get to the plant?

A. About 9:00 p.m. the evening of the 14th.

Q. Whom did you see?

A. Spike Henninger. [613]

Q. What were you told?

A. He told us that Mr. Copening would like to see us in the office.

Q. He told that to the three of you?

A. Yes.

Q. Is that all? A. That is all.

Q. Did you go to the office? A. Yes, sir.

Q. Did you see Mr. Copening? A. Yes, sir.

Q. What did he say?

A. He showed us the telegram.

Q. By that telegram, you mean Board's Exhibit 22?

A. That's it.

Q. And did he say anything else?

A. He says, "Due to that," he says, "I am sorry, but I guess I will have to let all you fellows go."

Q. Did you get your check? A. No, sir.

Q. When did you get your check?

A. The next day about noon.

Q. Prior to your conversation with Mr. Copening, had you ever heard that the Company's insurance was to be cancelled?

A. No, sir. [614]

Q. During the time that you worked for the company, did you ever have an accident?

A. No, sir.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Off the record.

[(Testimony of Arthur Leroy Heckert.)

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Cross Examination

By Mr. Merrill:

Q. Mr. Heckert, at the time that you went into Mr. Copening's office, at which time you say that he showed you the telegram, was Mr. Gilbert Moyle there?

A. He was in one of the offices there, but he wasn't in Mr. Copening's office.

Q. Did you talk to anybody other than Mr. Copening? A. No, sir.

Q. Have you ever been told by anybody of the Refining Company about carefulness in driving?

A. No, sir.

Q. Hadn't you been in the group that had been warned about carefulness in driving?

A. No, sir.

Q. Hadn't you been in the group that had been warned about having continued accidents?

A. I attended one meeting where they cautioned all the drivers to be careful. [615]

Q. Who cautioned them? A. Kermit Rice.

Q. Kermit Rice? A. Yes, sir.

Q. How many drivers were there?

A. I couldn't say. I don't remember.

Q. When was that meeting?

A. I couldn't say to that.

Q. Could you give us an idea? A. No, sir.

(Testimony of Arthur Leroy Heckert.)

Q. And Kermit Rice discussed the accidents that had occurred then, did he not?

A. No, sir. He said that they wanted to try for that Safety Award.

Q. Do you remember ever having a meeting with any of the drivers where Kermit Rice told you about the serious accidents that had occurred and suggested that they had to stop?

Mr. Leicht: He has answered that.

Mr. Merrill: I am asking about another occasion.

A. No.

Trial Examiner Riemer: Overruled.

Q. (Mr. Merrill, continuing): You don't recall any such occasion? A. No.

Q. Do you know of meetings that were held when you were not [616] there? A. Yes.

Q. So you know that they had had meetings with Kermit Rice when you were not present?

A. Yes.

Q. How long before the 14th of November did such meetings occur, if you know?

A. I don't know.

Q. Other drivers had suggested to you that they had been cautioned, had they not? A. Yes, sir.

Q. And told you that they had been cautioned individually and at meetings?

A. No, not individually,—at meetings.

Q. At meetings at which you were not present?

A. Yes.

Q. And they had been told that the insurance might be cancelled if these accidents didn't stop?

(Testimony of Arthur Leroy Heckert.)

A. No, sir. I don't ever remember of hearing that statement.

Q. But you do remember of other drivers telling you that they had been in meetings with Mr. Rice where he told them that the accidents would have to stop?

A. No, sir; they told me that he cautioned them to be more careful.

Q. Were those meetings more than one? [617]

A. I couldn't say. I believe that they were.

Q. And the truckdrivers had told you that on more occasions than one, also, had they not?

A. Well, more than one truckdriver told me, I remember that.

Q. That is what I mean. More than one truckdriver had told you that? A. Yes, sir.

Q. When did you become a member of the Association? By that, I mean the Labor Association out at the company?

A. It was in the early spring of 1940.

Q. That was some time after you had commenced working? A. Yes, sir.

Q. Then I believe that you say you joined the Teamsters Union sometime in the fall of 1941?

A. Yes, sir.

Q. When you went to Mr. Rosqvist's house, who went with you?

A. Mr. Burkholder and Mr. Patterson.

Q. Was Mr. Archibald there? A. No, sir.

Q. Did he go with you? A. No, sir.

(Testimony of Arthur Leroy Heckert.)

Q. Had he suggested that you go?

A. No, sir.

Q. He hadn't had anything to do with your going whatever? A. No, sir. [618]

Q. He didn't give you any blanks?

A. No, sir.

Q. Nor accept any money from you?

A. No, sir.

Q. Do you know whether or not that was true also of Burkholder and Patterson?

A. I believe that it was.

Q. That is to say that Mr. Archibald had not said anything to them about joining the union? Let me put it a little more clearly.

Do you know whether or not Mr. Archibald had said anything to Burkholder or Patterson about joining the Union?

A. To that, I can't say. I don't know.

Q. They never mentioned it to you if he did?

A. No.

Q. Do you know whether or not they had application blanks when they went there, or did they get their application blanks in Mr. Rosqvist's house?

A. It seems that they got them at Rosqvist's house. [619]

Q. Where did you go on your student run?

A. To the airport.

Q. And back? [621] A. Yes, sir.

Q. How far was that?

A. I would say six or eight miles.

(Testimony of Arthur Leroy Heckert.)

Q. And had you ever met Mr. Rice before that time? A. No, sir.

Q. What date did you say that was?

A. It must have been around the last of January, sometime. I don't remember the date.

Q. 1940? A. Yes, sir.

Q. You said something about Mr. Rice asking you if you belonged to any union?

A. Yes, sir.

Q. And what did you tell him?

A. I told him "no".

Q. How did that conversation come up?

A. He just asked me out of the clear blue sky.

Q. What had you been talking about before?

A. Nothing in particular that I remember.

Q. Nothing?

A. No, sir.

Q. You say that his comment was that "Mr. Moyle is strictly against any union"?

A. "Strictly against union," that's all he said.

Q. "Strictly against union"? [622]

A. Yes.

Q. And that's all he said?

A. That's all he said.

Q. There was no other comment made about it?

A. No, sir.

Q. Well, are you sure Mr. Rice said that to you?

A. Yes, sir.

Q. You have no doubt about that?

A. No doubt.

(Testimony of Arthur Leroy Heckert.)

Q. Was it when you were going or coming back? A. We were coming back.

Q. How near were you to the plant?

A. We were just pulling into the plant. [623]

Redirect Examination

By Mr. Penfield:

Q. During this conversation with Mr. Rice that you refer to, was anything said about the company hiring union men?

A. That was all that I can remember of it, he said that they were strictly against union.

Q. Did you ever pay any part of your initiation fee to Mr. [624] Archibald? A. Yes.

Q. All of it? A. No, \$6.25.

Q. Do you recall when that was?

A. No. It was several days later—it was on the 6th of October, I believe.

Q. That was after you had signed the application blank? A. Yes.

Q. How did you happen to pay it to Mr. Archibald?

A. Because I could never catch Mr. Rosqvist in, when I was in, and I was always out on a run in the daytime, it seemed like.

Q. Had you been informed that Mr. Archibald was collecting initiation fees?

A. No, sir. I asked him if he would take it in for me, and he said that he would. [625]

Mr. Moyle: May the record show that we have substituted the original of what has heretofore been

(Testimony of Arthur Leroy Heckert.)

marked as Board's Exhibit 22, in lieu of the copy heretofore received.

Trial Examiner Riemer: Thank you. Mr. Reporter mark the original telegram in evidence now as Board's Exhibit 22, substituting it for the copy heretofore marked.

Mr. Penfield: We can use the copy as a duplicate exhibit. I will call Mr. Moss.

TREVOR MOSS

was thereupon called as a witness by and on behalf of the Board, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name.

The Witness: Trevor Moss.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Trial Examiner Riemer: I am going to caution you as I have other witnesses, to speak as loudly as you can. Were you here this morning?

The Witness: For a while.

Trial Examiner Riemer: Could you hear the other witnesses testify? [627]

The Witness: Not very well.

Trial Examiner Riemer: You see the difficulty it causes us.

Direct Examination

Q. (Mr. Penfield) Are you employed at the present time, Mr. Moss?

(Testimony of Trevor Moss.)

A. No, sir.

Q. Were you ever employed by the Idaho Refining Company?

A. Yes.

Q. In what capacity?

A. As a transport driver.

Q. When were you first employed?

A. November 16, 1941.

Q. When did you terminate your employment with the Idaho Refining Company?

A. February, 3, 1942.

Q. What experience had you had as a truck driver prior to working for the Idaho Refining Company?

A. Approximately five years.

Q. Had you ever had any experience driving oil trucks?

A. Very little, prior to that time.

Q. What had your experience consisted of?

A. Mostly driving dump trucks.

Q. On what date did you first ask the company for a job?

A. Last November 15th on a Saturday, I believe.

Q. With whom did you talk? [628]

A. Mr. Rice, the truck foreman.

Q. Did you know Mr. Rice, or had you been referred to him?

A. I didn't know him, no, but someone pointed him out to me. That is, told me who he was.

Q. Had you heard that there were jobs open at the refinery?

(Testimony of Trevor Moss.)

A. Yes.

Q. Where did you see Mr. Rice?

A. I saw him right out at the plant.

Q. At what time?

A. Well, that was sometime in the afternoon, I don't remember the exact time.

Q. Saturday afternoon?

A. Yes.

Q. What conversation did you have with Mr. Rice?

A. I asked Mr. Rice if he was the truck foreman—no, first I asked him if he was hiring any drivers, and he said that he had been hiring a few, and I asked him if there was any chance to go to work, and he wanted my name and address, then he asked what experience I had had and I told him, and he said. "Stick around a while, and I will take you for a ride."

Q. Did you go for a ride?

A. Well, yes, a little later, but I didn't go with Mr. Rice. I went with one of the mechanics—Brown, I think was his name.

Q. With whom? [629] A. Mr. Brown.

Q. About what time was this?

A. Well, this was pretty late in the afternoon—I would say it was around five o'clock.

Q. Was this a student run?

A. Well, yes. Just more or less trying us out to see if we could handle the truck, I presume.

Q. Where did you go?

A. Well, we went up to the local airport about

(Testimony of Trevor Moss.)

four and one-half or five miles, up there and back.

Q. What happened on your return?

A. He sent us over to the office—Mr. Brown did.

Q. You said “He sent us”—who was with you?

A. My brother.

Q. Did he go on the run with you?

A. No, he took a separate run after I came in.

Q. You both went over to the office together then?

A. Yes.

Q. Who were present?

A. There was Mr. Moyle, Mr. Copening, and Mr. Rice.

Q. What conversation did you have with them?

Trial Examiner Riemer: Let’s identify the Moyle, please.

Q. (Mr. Penfield, continuing) Which Mr. Moyle was that?

A. Well, he was the one that is president of the company out there. [630]

Q. Mr. Gilbert Moyle? A. Yes.

Q. What conversation did you have?

A. Well, Mr. Rice introduced me to Mr. Moyle, and Mr. Copening, then we sat down and he asked me if I belonged to any union.

Q. (Trial Examiner Riemer) Who did?

A. Mr. Moyle did, and I told him “no”; then he says, “We have our own union and own organization out here in the company” and he said, “We were free to join any time that we wanted to.”

(Testimony of Trevor Moss.)

Q. Did he say anything about any outside organizations?

A. Well, he said that they didn't belong to any union and didn't intend to.

Q. Can you recall anything else that was said?

A. Well, outside of, he asked my driving experience, and I told him that, about the same thing that Mr. Rice asked me.

Q. When did you commence driving?

A. That was Monday morning, the 17th, I went to Salt Lake. [631]

Cross Examination

Q. (Mr. Merrill) Where were you living at the time that you made application for employment to the Idaho Refining Company?

A. Garland, Utah.

Q. Did you come up here for the purpose of making that application?

A. No, I came up to see my folks.

Q. What were you doing down there?

A. Driving truck for Olaf Nelson Construction Company.

Q. Then you worked for the Idaho Refining Company how long?

A. From the 16th of November to the 3rd of February.

Q. Why did you discontinue?

A. I went to sleep and ran off in the ditch, and they fired me. [635]

Q. Isn't it a fact that what they asked you there in the office was whether or not you belonged—what

(Testimony of Trevor Moss.)

Lodge you belonged to, and what church you belonged to, what fraternal associations, isn't that what they asked you? [638]

A. No, I wouldn't say that it was asked that way. He asked me if I belonged to any union, and I told him "no". That is what I was asked if I belonged to.

Q. What else were you asked in that respect?

A. I wasn't asked anything else in that respect.

Q. You were not told that you could not belong to a union?

A. No, I wasn't told that.

Q. Mr. Moyle, you say, merely said that there was a union in the company that you could belong to?

A. Well, they had their own organization in the company there that I could belong to any time I wanted to.

Q. But at no time in that conversation did Mr. Moyle or anyone else tell you that you could not belong to any other union?

A. Well, they didn't tell me that, but I gathered from the tone——

Q. What was said that caused you to gather from it, is what I want to know.

A. Well, just on the first question asked, if I belonged to any union.

Q. Is it that upon which you base your thought that you should not belong to any union, merely because they asked that?

A. Well, why should a company ask that?

(Testimony of Trevor Moss.)

Q. That isn't what I asked you.

A. Well, maybe I had the wrong attitude, but that is the way [639] that I felt about it.

Q. So then the only thing that you say Mr. Moyle said, or anyone else there in that conversation, was to ask you if you belonged to a union, and you said "no", then he said that there was an organization or a union there that you could belong to?

A. Yes, in their own company.

Q. In their own company? A. Yes.

Q. And that was all that was said about that subject?

A. Outside of the fact that they mentioned that they didn't belong to any union and didn't intend to.

Q. Whom do you mean by "they"?

A. Well, Mr. Moyle.

Q. Well, you understood, of course, that Mr. Moyle would not be eligible to join a union?

A. Well, I don't know nothing about the union. That is nothing to me. [640]

MERLIN BOWMAN

was thereupon called as a witness by and on behalf of the Board, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name for the record, please, Mr. Bowman.

The Witness: Merlin Bowman.

(Testimony of Merlin Bowman.)

Trial Examiner Riemer: Will you keep your voice up—where do you live?

The Witness: Pocatello.

Direct Examination

Q. (Mr. Penfield) Where are you employed at the present time, Mr. Bowman?

A. At the Gun Plant—Morrison-Knudson.

Q. Will you speak up, please?

A. At the Gun Plant.

Q. Here in Pocatello?

A. Yes, sir.

Q. In what capacity?

A. I am driving a Euclid Truck. [645]

Q. Did you ever work for the Idaho Refining Company?

A. Yes, sir.

Q. In what capacity?

A. Truck driver.

Q. When did you commence work for the company?

A. Well, I don't remember for sure whether it was the 16th or 17th of November, I believe.

Q. Whom did you ask for the job?

A. Kermit Rice.

Q. Where did you see him?

A. Saw him in the garage at the Idaho Refinery.

Q. On what date was that?

A. Well, I don't know for sure the date. It was the date before I went to work, and I don't know whether I went to work on the 16th or 17th.

(Testimony of Merlin Bowman.)

Q. It was the day before, in any event?

A. It was the day before.

Q. Have you known Mr. Rice previously?

A. Well, I have known him for quite a while—
known of him for quite a while.

Q. Had you been informed that jobs were available?

A. Yes, sir.

Q. Was Mr. Rice the first person that you saw when you went out to the refinery?

A. Yes. [646]

Q. What did he tell you?

A. I just went up and approached him for a job. He told me to wait a few minutes, and I waited a few minutes, and later he came back and said that he was pretty busy that day and for me to come back at eleven o'clock the next day.

Q. Did you come back the next day?

A. Yes, sir.

Q. Whom did you see then?

A. I saw Mr. Rice again.

Q. What occurred on that day?

A. Well, he took me out in a truck, and we drove out to the airport and back to the refinery.

Q. Was this a student run?

A. Yes, sir; I guess it was; it was the only one I had.

Q. What happened on your return?

A. Well, when we got back, why, he took me over to Mr. Copening.

Q. Where was Mr. Copening?

(Testimony of Merlin Bowman.)

A. He was in the office at the Idaho Refinery.

Q. What occurred in Mr. Copenig's office?

A. Well, the first thing, he introduced me to Mr. Copenig.

Q. Whom do you mean by "he"?

A. Mr. Rice introduced me to Mr. Copenig, and we talked a little there, and I don't know what was said then, but Mr. Rice left, and then Mr. Copenig asked me if I belonged to a union. That was after he had partly hired me, I guess, then he asked [647] me if belonged to a union, and I told him that I didn't and never had belonged to any.

Q. Did he say anything further?

A. Just talked in general, is all.

Q. When did you commence work?

A. I am pretty sure that it was that evening, the evening of the 16th or 17th.

Q. The same evening you had this conversation with Mr. Copenig?

A. Yes, sir. [648]

Cross Examination

Q. (Mr. Moyle) Mr. Bowman, you did belong to a railroad union, did you not?

A. Oh, yes, I had belonged to a railroad union.

Q. And you didn't tell Mr. Copenig that? But that is the fact, is it?

A. Yes, I belonged to the Firemen & Oilers over to the railroad.

Q. And Mr. Copenig discussed with you in some detail your qualifications and your past experience, did he not?

(Testimony of Merlin Bowman.)

A. I believe that he did.

Q. He asked you in detail where you had worked previously?

A. I don't remember just what we did talk about there. I remember him talking about where I had worked or where I was working.

Q. And what your experience had been as a truck driver?

A. Well, I believe that he did, either him or Mr. Rice, I don't know which one asked me that.

Q. He asked you about your habits?

A. Yes.

Q. Whether you were sober?

A. He asked me about that.

Q. Whether you took the rest that a driver should take in [649] place of running around town?

A. I can't recall anything like that being mentioned that day.

Q. About getting proper rest between trips or shifts?

A. No.

Q. And he asked you what lodge or church connections you had?

A. I don't recall him asking me that.

Q. He may have done so?

A. He could have done it. I don't remember the conversation.

Q. The only thing that you remember in that whole conversation was that he asked you if you belonged to a union, and you said "no", is that the only thing that you can now remember?

(Testimony of Merlin Bowman.)

A. That is about the only thing, right now.

Q. At that time, you say that you were partially hired?

A. Well, I figured that I was, yes.

Q. As a matter of fact, you had been hired, had you not?

A. Well, I believe that I had, or Mr. Rice would not have taken me over.

Q. You were hired before any questions were asked about any union affiliations?

A. I think that Mr. Rice hired me.

Q. Whether he asked you what lodge you belonged to, or what union you belonged to, you could be mistaken, could you not?

A. Well, I do remember him asking me about the union proposition .

Q. That could not have been a lodge? [650]

A. No.

Q. Didn't he mention to you and ask you if you were an Elk or a Mason or belonged to any fraternal organization?

A. No. [651]

LEONARD THEODORE FOWLER

was thereupon called as a witness by and on behalf of the Board and after being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: Leonard Theodore Fowler.

Trial Examiner Riemer: Where do you live?

[652]

The Witness: 1334 South Second, Pocatello, Idaho.

Direct Examination

Q. (Mr. Penfield) Where are you employed?

A. Union Pacific Stages.

Q. What is your position?

A. Bus driver.

Q. Did you ever work for the Idaho Refining Company?

A. I certainly did.

Q. In what capacity?

A. Truck driver.

Q. When were you first employed by the company?

A. About September 7, 1939.

Q. When did your employment with the company terminate?

A. November 14, 1941.

Q. What was your experience as a truckdriver prior to going to work with the company?

A. I had driven truck about two years off and on. I had driven for a while for Covey, for a while for Shell Oil Company at Blackfoot, and a farm truck.

(Testimony of Leonard Theodore Fowler.)

Q. During the time that you worked for the Idaho Refining Company, did you ever have any accidents?

A. Yes, I did, one.

Q. When was that?

A. That was on December 8th at Bear River City, Utah, about six o'clock in the morning.

[653]

Q. What year? A. 1940.

Q. Will you tell us about that accident?

A. Yes. It was foggy, awful foggy; the roads were quite slick, and I have been following a couple of cars about half a mile behind them, when I run into this fog; one car stopped and pulled off the road to adjust his lights, I presume, and the other car stopped in the center of the road. He had no tail light, and before I could—when I first saw him, and before I could get stopped, why, I hit him, but I turned off to the right just before I hit him, and just hit his fender and punctured one tire.

Q. How much damage was done to his car?

A. He sent me a bill on that, and I think that it was \$38 damages.

Q. Was there any damage done to the truck?

A. None.

Q. Was there any investigation of this accident by the police?

A. Yes, we had the police out there. He looked it all over, and checked the tire tracks and marks, and said I done a very good job in getting off as easy as we did on the accident—what I mean is,

(Testimony of Leonard Theodore Fowler.)

the accident could have been worse than what it was if I hadn't have done what I done, and turned off to the side of the road.

Q. Will you state whether you were a member of any labor [654] organization at the time that you went to work for the company?

A. No, sir.

Q. Did you become a member of the Idaho Refining Company Benefit and Labor Association?

A. Yes, sir.

Q. When did you join?

A. I would say about a week after I went to work, or within a week.

Q. Aside from the Association, did you join any other labor organization during the time that you worked for the company?

A. Teamsters' Local here, 440.

Q. I show you Board's Exhibit 5-I, and ask you if you can tell me what that is?

A. Yes, sir. This looks like my application for the Teamsters Local.

Q. Local 440? A. Yes.

Q. Is that your signature on there, on this application? A. Yes, sir; that is.

Q. Where did you sign this application?

A. In the Labor Temple.

Q. Who was with you?

A. Tom Brandt, and there were several other fellows there.

Q. Who was Tom Brandt?

A. Tom Brandt was the secretary for the Local at that time. [655]

(Testimony of Leonard Theodore Fowler.)

Q. Do you recall any of the others who were there?

A. No, I could not come right down and name them; I never paid any particular attention to them.

Q. What was the date that this was signed?

A. On September 29, I believe.

Q. Did you ever attend any union meetings?

A. You mean in 440?

Q. Yes. A. Yes, I attended one.

Q. That was following September 29?

A. Yes.

Q. Was there a driver—were the drivers of the Idaho Refining Company present?

A. I think that practically all the fellows were present.

Q. Do you recall when this meeting was?

A. No, sir; I couldn't name the exact date.

Q. Was it before November 14?

A. No, sir; I believe that it was after.

Q. Do you know if any other drivers had joined the union prior to November 14?

A. Yes, I know practically all the fellows had.

[656]

Q. Were you called on an assignment on November 13? A. I was.

Q. How did you learn of your assignment?

A. I believe that I drove out to the refinery that night.

Q. Had you been called? A. No, sir.

Q. Where did you see your assignment? [659]

A. It was wrote up in the dispatcher's orders.

(Testimony of Leonard Theodore Fowler.)

Q. At the loading dock? A. That's right.

Q. What was the assignment?

A. Well, I was supposed to go to Meridian.

Q. What time?

A. I left the refinery about midnight.

Q. What time did you go out to the refinery?

A. I would say 11:00 o'clock.

Q. Eleven o'clock? A. Yes.

Q. And you say that you left at——

A. Midnight.

Q. Where did you go? A. Meridian.

Q. How far is Meridian?

A. About 270 miles.

Trial Examiner Riemer: That is, one way?

The Witness: Yes, sir.

Q. (Mr. Penfield, continuing) When did you arrive there?

A. About nine o'clock the next morning.

Q. The morning of November 14?

A. That's right.

Q. When did you return?

A. About 7:30 that evening. [660]

Q. What happened when you returned?

A. Well, Spike Henninger met me when I got off the truck and he says, "Copening wants to see you in his office", so I went in and saw Frank and he told me that I was laid off due to the fact that the insurance was cancelled, and he gave me my check, and that's about all.

Q. Is that all the conversation that you had with Mr. Copening? A. Yes, sir.

(Testimony of Leonard Theodore Fowler.)

Q. Was any telegram shown to you?

A. No, sir.

Q. Had your work ever been criticized while you were working for the Idaho Refining Company?

A. No, sir; not unless it was to my back.

Q. Prior to your meeting with Copening on the evening of November 14, had you ever heard anything about the cancellation of insurance?

A. No, sir.

Mr. Penfield: I believe that is all.

Cross Examination

Q. (Mr. Merrill) Mr. Fowler, have you not been present at meetings of the group where driving was discussed there at the refining plant?

A. I had, a few of them.

Q. How many? [661]

A. Oh, it would be kind of hard to say. They held meetings, while not frequently, they did have a few of them; several of them I was out on the road when they held them.

Q. I mean those that you attended, how many did you attend?

A. Oh, I would say maybe six out of the three years that I was there.

Q. Did they become more frequent towards the end of your period of time?

A. No, I believe not.

Q. Do you recall who spoke to you about driving, at those meetings?

(Testimony of Leonard Theodore Fowler.)

A. Well, they all took their turn—Gil and Kermit.

Q. You were advised about careful driving, weren't you?

A. No, no one ever said anything to me about driving carefully.

Q. At those meetings? A. Yes.

Q. Was there advice on careful driving given at those meetings?

A. If there was, I missed out on it.

Q. You never heard that? A. No, sir.

Q. At those meetings, didn't they advise you towards the last that the insurance would be cancelled, if something was not done?

A. They did not.

Q. Were you ever told by any employee of the Association that [662] they were having too many accidents? A. No, sir.

Q. That matter was never called to your attention, or within your hearing?

A. That's right.

Q. By anybody? A. By anybody.

Q. You knew that the drivers were having a lot of accidents, didn't you?

A. Due to the condition of——

Q. I am asking you to answer my question "yes" or "no". A. No.

Q. Didn't you know that they were having some accidents?

A. They were bound to have a few.

Q. Please just answer my question. Did you know that the drivers were having accidents?

(Testimony of Leonard Theodore Fowler.)

Q. Was he a member at the time that you were a member? A. No.

Q. Now, you spoke of Campbell. Campbell was a member of another union and was transferred merely to 440, wasn't he?

A. Yes, that is the way I took it.

Q. He was a member of the Union all the time that he was working for the Refining Company, wasn't he? A. Yes.

Q. Do you know what union he was a member of? A. No, sir; I don't.

Q. You mentioned Wayne Douglas; he, too, was a member of another [667] union and merely transferred to this one, wasn't he?

A. No. Wayne Douglas joined this union here.

Q. Do you know whether or not he was also a member of another union?

A. No, sir; not to my knowledge. [668]

A. STANLEY MERRILL

called as a witness by and on behalf of the Board, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: A. Stanley Merrill.

Trial Examiner Riemer: Where do you live?

The Witness: 640 West Hayden, Pocatello.

(Testimony of A. Stanley Merrill.)

Direct Examination

Q. (Mr. Penfield) Where are you employed, Mr. Merrill? [670]

A. At the gun plant in Pocatello.

Q. In what capacity? A. Truckdriver.

Q. Were you ever employed by the Idaho Refining Company? A. Yes.

Q. In what capacity? A. As a driver.

Q. When were you first employed?

A. Oh, I think that it was about the latter part of April, I would say the 26th, of 1939, I think that it was.

Q. April 26, 1939. How long did you continue to work for the company?

A. Until November 14, 1941.

Q. Prior to going to work for the company, what experience had you had as a truck driver?

A. Oh, I had been driving trucks of about the same capacity as the refinery had, about six months. Before that time, I had been driving intermittently for a flour mill; farm truck—produce.

Q. During the time that you worked for the company, have you ever had any accidents?

A. Yes.

Q. Will you tell us about it?

A. I had a major accident, what I would classify as a major accident, I think that it was on March 12 of 1941. [671]

Q. Where did this occur?

A. Oh, a mile or a mile and a half north of the State Fair Grounds at Boise.

(Testimony of A. Stanley Merrill.)

Q. What happened?

A. The nature of the accident?

Q. Yes.

A. I was returning from Caldwell to Boise, and had 100 cases of oil on top of the truck, with quite a high center of gravity; also, I had approximately 900 gallons of gasoline in a 2700 gallon compartment, and as I rounded a curve—taking a sharp curve, the tank just seemed to become separated from the truck in the fifth wheel unit, and dropped on the driver wheels—I guess it dropped there—it turned over out to the side, hit a utility pole, stopped off the side of the road. Then it turned over on its side right in the middle of the road. The gasoline wasn't lost. It was checked later and was about 75 gallons short. The oil was scattered over a considerable distance, went down over the bank into an irrigation ditch—part of it.

Q. Did you generally carry oil on the top of the truck?

A. Returning from Caldwell to Pocatello, we nearly always carried oil on top.

Q. Was that on instructions from the company?

A. Yes.

Q. What was the extent of the damage to the truck? [672]

A. Oh, the truck was damaged—the left front fender was mashed. It was fixed, though, and not replaced. The spotlight and the cab were more or less shaken up. The windshield—the same windshield was still in it, and used after. The tank

(Testimony of A. Stanley Merrill.)

was bent in two places, which I would say would not be very much work to straighten out.

Q. How fast were you going at the time?

A. I estimated my speed at about 25 miles per hour. Witnesses estimated it at 20.

Q. Did you ever report it to Mr. Moyle?

A. Not directly.

Q. Did Mr. Moyle or Mr. Rice ever say anything to you in connection with it?

A. I talked to Rice the following morning on the telephone.

Q. Did any of them ever indicate to you whether it was your fault?

A. No, they seemed to be on the contrary.

Q. Were you ever suspended for this accident?

A. No.

Q. When did you resume driving?

A. I think that I was in Boise possibly 24 hours after that. The doctor held me one day for observation, and I came back the next day on the truck.

Q. Were you warned that you might be discharged if you had another accident? [673]

A. No.

Q. Did you have any other accidents while you worked for the company?

A. I had a couple of minor accidents.

Q. Were these before or after the one that you just referred to?

A. One before, and one after.

Q. When were these accidents?

(Testimony of A. Stanley Merrill.)

A. The one before,—I don't remember the date—was along the first snowstorm of the year. I was going east out of Lava Hot Springs, about four miles east, and there was a car pulled over in the middle of the road and practically stopped and due to defective brakes it was impossible for me to stop. I pulled alongside the road as fast as I could in order to avoid hitting him, but I couldn't avoid it without running off the road, so the bumper of the truck struck the back end of a Ford coupe.

Q. How much damage was done?

A. Oh, I would estimate it about \$35 to the automobile.

Q. To the automobile?

A. Yes. There was no damage to the truck.

Q. What was your other accident?

A. It was just south of Ogden, a little ways. I don't remember how far—right around Weaver County line, and the road was good. It was just sprinkling a little bit—very little rain—I was travelling about 40 miles per hour, and a fellow in a

[674]

pick-up passed me immediately; after passing me he sighted some construction ahead and so he swung into my lane of traffic directly in front of me, and applied the brakes, and I could not stop, and the consequences were the bumper hit the tail gate of the pick-up.

Q. How much damage was done?

A. Well, I don't know. He stated at the time that it was less than \$25 and he was in a hurry,

(Testimony of A. Stanley Merrill.)

and there would be no need for a police investigation, so I don't know—I understand later he sent in a claim for something in *excess this*. I don't know what it was, though.

Q. (Trial Examiner Riemer) What is a pick-up?

A. Well, commonly called a half-ton truck.

Q. (Mr. Penfield, continuing) Was any damage done to the truck, the company truck?

A. No.

Q. Do you know whether the insurance company paid anything on either of these accidents?

A. No, I don't.

Q. Did you refer both of these accidents——

A. Yes.

Q. ——to the company? Did anyone ever attempt to assess the blame on you for these accidents?

A. No.

Q. Were you suspended for either of them?

[675]

A. No. [676]

Q. (Mr. Penfield) I show you Board's Exhibit 23 and ask if you can tell me what that is?

A. Notice of separation stating I am no longer employed by the company.

Q. Is that the notice that you testified you received from the [683] company?

A. Yes.

Mr. Penfield: I offer this as Board's Exhibit 23.

Mr. Moyle: We have no objection.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit 23.

(Testimony of A. Stanley Merrill.)

(Whereupon the document hereinabove referred to was marked and admitted in evidence as Board's Exhibit 23.)

BOARD'S EXHIBIT No. 23

Notice of Separation and Disqualification

1. Worker's Name (last) Merrill, (first) Stanley, (middle) A. 2. S. S. A. No. 519-09-9602
3. Place of Employment Idaho Refining Company, Pocatello, Idaho
4. Last Day Worked Nov. 14, 1941 5. Regular Occupation Truck Driver
6. Reason for Separation:
 - ☐ Left Work Voluntarily
 - ☐ Discharged for Misconduct in Connection with Employment
 - ☐ Strike, Lockout or Other Labor Dispute
 - ☐ Sickness, Injury or Other(Explain Below)
7. Explain in Detail: Services terminated due to reorganization made necessary by cancellation of insurance.
8. Has Worker Received Wages in Lieu of Notice?
Yes ☐ No ☒ Amount \$.....
Equal to Pay from the Period from (month)(day)..... to (month).....(day).....

I certify that the above information is true and correct. I do (do not) waive notification of the validity of any claim for benefits arising in connection with this report.

(Testimony of A. Stanley Merrill.)

9. Employer's No. 250 2911-02830
10. Firm Name Idaho Refining Company
11. Address Box 767 Pocatello, Idaho
12. Signature John H. Peterson
13. Date Nov. 14, 1941
14. Title Treas.

State of Idaho
Unemployment Compensation Division
Industrial Accident Board
Boise, Idaho

Notice to Employer

Fill out in triplicate; give yellow copy to worker, keep blue copy for your files, mail white copy to the Unemployment Compensation Division.

Notice to Worker

Take this notice to the nearest Idaho State Employment Service Office if you wish to file a claim for benefits.

Instructions To Worker

Take this notice immediately to the nearest Idaho State Employment Service Office listed below if you desire to file a claim for Employment Compensation Benefits. If the nearest office is inaccessible to you, send a post card to that office asking for information on the manner of filing claims.

In order to receive benefits for unemployment, you must:

1. Register for work
2. File a Claim for Benefits
3. Be able to work and available for work
4. Serve a waiting period of two weeks of total

(Testimony of A. Stanley Merrill.)

unemployment (a week of unemployment is a week of no work or a week of less than full-time work during which wages earned were less than the weekly benefit amount established for the individual claimant). The waiting period weeks need not be consecutive but must be wholly within a period of 91 consecutive days.

5. Have earned wages in covered employment during the base period of \$140 or more, \$78 of which must have been earned in a single quarter.

Certain conditions surrounding separation from work may disqualify you for a period of from one to five weeks. You will be informed of such disqualification, if any, and be given an opportunity for a fair hearing. Among the disqualifying conditions are:

- (a) Voluntarily quit without good cause in connection with your employment
- (b) Discharged for misconduct in connection with your employment
- (c) Failure to apply for or accept available, suitable work when offered or directed by the Employment Service or the Industrial Accident Board.

Warning

IT IS NOT NECESSARY TO EMPLOY ANYONE TO AID YOU IN COLLECTING BENEFITS. A representative in the office to which you

(Testimony of A. Stanley Merrill.)

report will explain your rights and what you must do to qualify for benefits.

Idaho Employment Service Offices are located at:

Boise	Jerome	Preston
Bonnors Ferry*	Lewiston	Rexburg ****
Burley**	Moscow	Salmon
Caldwell	Nampa***	Sandpoint
Coeur d' Alene	Orofino	St. Anthony
Grangeville	Payette	St. Maries
Idaho Falls	Pocatello	Twin Falls
		Wallace

* Branch of Sandpoint Office

** Branch of Twin Falls Office

*** Branch of Caldwell Office

**** Branch of St. Anthony Office

Mr. Penfield: In the off-the-record discussion, it was agreed between the Board and the Company, that notices similar to Board's Exhibit 23 in evidence, except as to the names of the drivers, the addresses of the drivers, and the Social Security numbers of the drivers, were given to all of the drivers named in the complaint with the exception of Wayne Douglas. Do you so stipulate?

Mr. Moyle: Unless there is some difference in the date of discharge. I think that is correct.

Mr. Penfield: Do you so stipulate?

Mr. Moyle: It is so indicated.

(Testimony of A. Stanley Merrill.)

Trial Examiner Riemer: It is so stipulated, Mr. Moyle?

Mr. Moyle: Yes. [684]

Cross Examination

By Mr. Moyle:

Q. And when you joined Local 440, Mr. Archibald had nothing to do with your joining it, did he?

A. Oh, I talked to him a number of times.

Q. You did? A. Yes.

Q. It was through his efforts you joined?

A. I wouldn't say through his efforts, but it might have been through some of his influence.

Q. Well, was it? A. Partly.

Q. What did he say to you that influenced you to join and except for which you would not have joined?

Mr. Penfield: He didn't testify to that.

A. I don't know whether I wouldn't have joined. I don't like that question that way.

Mr. Penfield: It isn't a proper question.

Mr. Moyle: I don't blame you. [693]

Q. (By Mr. Moyle): In other words, you would have joined regardless of anything Archibald said, wouldn't you?

A. Well, I don't know for sure, but I think I would.

Q. And you didn't pay Archibald any of your dues, did you?

A. I gave him some of my money.

Q. You did? A. That went for my dues.

(Testimony of A. Stanley Merrill.)

Q. Did you ask him to take it over and give it to the Union?

A. I don't remember whether I asked him or whether he offered to. It was rather inconvenient for me to get down there at that time and he could have offered to take it there or I could have asked him to. Anyway, he did. [694]

Q. (By Trial Examiner Riemer): Mr. Merrill, you testified that before the truck drivers went on the monthly salary arrangement you were receiving 50c an hour, is that correct?

A. Actually to put it in hours we were receiving more than that.

Q. Well, then you tell me what you were receiving. Tell me this, how was your wage computed prior to this [695] changeover?

A. May I cite a trip for an example?

Q. Yes.

A. On some of our trucks we were driving at that time we were paid 22 hours at that time a trip to Salmon City and return, and it was possible to do it without violating any I. C. C. regulations, safety regulations or anything else, it was possible for us to complete that trip in 17 hours. Consequently when we turned our time card in we would turn in such as 22 hours, and actually we were 17 hours doing it. Therefore we would receive \$11 for 17 hours' work which would be some over 50c an hour.

[696]

(Testimony of A. Stanley Merrill.)

Recross Examination

By Mr. Moyle:

Q. Of course if you would make this trip to Salmon City in 14 hours you would have got still more per hour, wouldn't you?

A. Technically, yes.

Q. But the company required you to take 22 hours for the trip? A. No, they didn't.

Q. And allowed you 22 hours' pay for it?

A. They allowed us 22 hours' pay for the trip.

Q. What is the distance from Pocatello, the refinery, to Salmon City?

A. Oh, I don't remember.

Q. And after you leave Blackfoot, 25 miles away, the roads are dirt roads, are they not—graded roads? A. A very small percentage.

Q. How far are they oiled?

A. Oh, 40 miles would cover everything that wasn't oiled, I think.

Q. That is from where, Mackay to Salmon City? [698]

A. That is from the top of Willow Creek summit, that is beyond Mackay, into Challis, then another stretch down the Salmon River.

Q. When was the road oiled north of Mackay?

A. I don't know.

Q. A good part of this road is a circuitous route up a canyon, isn't it, over a divide?

Mr. Penfield: I object to that as being immaterial.

(Testimony of A. Stanley Merrill.)

Trial Examiner Riemer: The objection is overruled.

Q. (By Mr. Moyle): You know it follows along the Salmon River a good 20 miles, and other rivers?

A. It follows down the Salmon River too.

Q. It follows up when you are going back?

A. Yes.

Q. And follows up and down the Lost River too, doesn't it?

A. No, sir, it crosses it.

Q. And you don't know the distance?

A. No.

Q. Approximately?

Trial Examiner Riemer: Isn't about 230 miles a good guess at the distance, Mr. Witness, between Pocatello and Salmon City?

The Witness: I was trying to recall.

Q. (By Mr. Moyle): Well, we can show that distance without wasting any time. Now, as a matter of fact, whenever you [699] made this trip you undertook to make it in 17 hours in place of 22 hours, didn't you?

A. Not necessarily.

Q. Well, how long did it take to make it?

A. It would all depend on the equipment you would have.

Q. Did you ever take the full 22 hours?

A. Oh, yes—more than that.

Q. When you had no trouble?

A. Yes—no, not when I didn't have any trouble.

(Testimony of A. Stanley Merrill.)

Q. And you were allowed corresponding hourly wages for other trips depending on their mileage?

A. Yes.

Q. And on all of those other trips were you able to complete the return trip in less than the number of hours allowed, I mean barring accidents and delay?

A. Not all of them, but on all of them over 150 miles round-trip you could easily.

Q. You could knock off how many hours maximum on trips over 150 miles?

A. Well, it corresponded directly to their mileage.

Q. How far is Boise, for instance?

A. I always call it 250 miles.

Q. How many hours were you allowed for that?

A. Small truck I think it was 20, intermediate class was 22 I believe and the truck and trailer class paid an [700] hour and a half more than that if I remember right.

Q. (By Trial Examiner Riemer): For the round-trip?

A. Yes.

Q. (By Mr. Moyle): How many hours would you say you knocked off of that time in making the trip?

A. Four.

Q. Four hours? A. Yes.

Q. You would come in four hours earlier?

A. If you would make your connections for unloading and didn't have any unnecessary delays

(Testimony of A. Stanley Merrill.)

you could knock off four hours from your trip easy.

Mr. Moyle: I think that is all.

Redirect Examination

By Mr. Penfield:

Q. After you were put on a salary in July, 1941, was there any advantage to your making a 22-hour trip in 17 hours? A. None whatever.

Q. And you went on a salary, and were on a salary until November 15, 1941? A. Yes.

[701]

R. E. MILLER

was called as a witness herein, being duly sworn, and testified as follows:

Direct Examination

By Trial Examiner Riemer:

Q. State your name, please.

A. R. E. Miller.

Q. Where do you live? A. Jerome, Idaho.

Q. (By Mr. Leicht): Where are you employed at the present time?

A. Idaho Refining Company.

Q. In what capacity?

A. Driving transports.

Q. When did you first start working for the Idaho Refining Company?

A. I pulled my first trip about the 19th of April in 1941.

(Testimony of R. E. Miller.)

Q. And how long did you work after April, 1941? A. Until November 14th.

Q. 1941? A. That's right.

Q. And then you discontinued working for the company? A. That's right.

Q. And when did you resume your work for the company? A. March 10, 1942.

Q. Prior to your first starting to work for the company, [702] how much experience had you had as a truck driver? A. About five years.

Q. Was that working just as a truck driver or was any part of it driving oil transports?

A. That was just as truck driver.

Q. During the time you worked for the Idaho Refining Company prior to November 14, 1941, did you ever have any accidents? A. No, sir.

Q. From the period between April 19, 1941 and November 14, 1941, were you a member, or did you become a member of the Idaho Refining Company Employees' Benefit and Labor Association?

A. Yes, sir.

Q. About how soon after?

A. I imagine a month or six weeks.

Q. Prior to your discharge on November 14, 1941, did you ever join any other labor organization? A. The 440 Union.

Q. That is the Teamsters' Union?

A. Yes, sir.

Q. I show you Board's Exhibit 5-0 and ask you what that is?

(Testimony of R. E. Miller.)

A. Well, that is a blank I filled out to join Local 440—Teamsters' Union.

Q. And did you sign it? [703]

A. Well, evidently, that looks like my handwriting.

Q. Is that your signature? A. Yes, sir.

Q. Were you later initiated as a member of that organization? A. Yes, sir.

Q. When did you sign that application?

A. This says October 2nd.

Q. Would that be about correct?

A. I think so.

Q. What were the circumstances which led up to your joining the Union?

A. Oh, I don't know, it was just a matter of talking it over and deciding that we wanted to join the Union.

Q. Where did you sign that card, if you remember? A. In August Rosqvist's house.

Q. Was anybody else with you at the time, if you recall?

A. No, just August Rosqvist and his secretary.

Q. And you say you were rehired by the company on March 10, 1941? A. That's right.

Q. Immediately prior to your being rehired, did you talk with anyone connected with the company?

A. Only Spike the night he hired me.

Q. Who is Spike? [704]

A. Mr. Henninger.

Q. What was the substance of your conversation with Mr. Henninger?

(Testimony of R. E. Miller.)

A. Well, he told me that—first he asked me if I could go to work and I told him I could and he said they had a truck and no driver, and then he asked me how I stood with the Union, and I told him I had a withdrawal card and asked him if he wanted to see it, and he said no, as long as I had it that's all that was necessary.

Q. When was that, if you can recall?

A. I imagine about ten o'clock on March 10th.

Q. In the evening? A. Yes.

Q. Where was this conversation?

A. In my home.

Q. He came over to see you, did he?

A. Yes, sir.

Trial Examiner Riemer: Was this in Jerome?

The Witness: This was in Pocatello.

Q. (By Mr. Leicht): At that time you were residing in Pocatello? A. Yes, sir.

Q. When did you start to work?

A. That same evening about fifteen minutes later.

Q. Shortly after your commencing work, did you have a [705] talk with Mr. Rice? A. Yes.

Q. Who is Mr. Rice?

A. He is—at that time he was the driver foreman.

Q. Driver foreman?

A. Yes, over the trucks.

Q. By that time you mean in March?

A. That's right.

Q. Was he also driver foreman before that time?

(Testimony of R. E. Miller.)

A. Yes.

Q. For some years or some time?

A. I don't know how long—when I started working there.

Q. He was foreman when you started working there? A. That's right.

Q. Now, tell us the conversation that you had with Mr. Rice.

A. Well, he merely told me that in case I had anything to talk over, to come in and sit down and they would be glad to listen to me and also that during that meeting in July—I didn't attend—but he told me that it was agreed that if that wasn't enough money the drivers were to come and notify the office, and he was satisfied that if they had, the office would have done something about the wage scale.

Q. Then did he say anything further about the other truck [706] drivers?

A. Well, I believe he mentioned that if they had done that they probably would be working now.

Q. Did Mr. Rice mention anything about the Union directly or indirectly?

A. Well, he merely stated that if the drivers had come to the office instead of going uptown—I believe that was his words.

Q. If they had done that they would still have their jobs?

(Testimony of R. E. Miller.)

A. He didn't say their jobs, he just said they would be working now, as nearly as I remember it.

Q. Was that about the substance of the conversation?
A. Yes, I think so.

Q. Then on November 14th, what occurred?

Trial Examiner Riemer: Excuse me for interrupting, I understand in this alleged conversation with Rice, that occurred sometime after March 10th?

Mr. Leicht: Several days afterwards, as I recall it.

Trial Examiner Riemer: Please fix the time.

Q. (By Mr. Leicht): Can you tell us about when that conversation with Rice took place that you just testified to?

A. Well, I imagine it would be the 13th or the 14th. I had pulled two or three trips before I had been able to see Mr. Rice. [707]

Q. That would be March of—

A. 1942. Mr. Rice called me up and asked me to come over to the garage about ten o'clock in the morning or 9:30, something like that, and when I went over he told me our insurance had been cancelled and that he was sorry, and that is about the substance of that.

Q. Had you ever heard anything prior to that time about the cancellation of insurance?

A. No, sir.

Q. Were you ever warned about any accidents?

A. No, sir.

(Testimony of R. E. Miller.)

Q. Had you ever been reprimanded for your driving? A. No, sir.

Q. Were you ever threatened with discharge because of the accident record? A. No, sir.

Mr. Leicht: I guess that is all.

Cross Examination

By Mr. Merrill:

Q. Mr. Miller, do you recall any comment made to you before November 14, 1941, that the accidents were too numerous?

A. No, sir, not to my knowledge.

Q. Didn't you hear some comment around among the boys to that effect? A. No, sir. [708]

Q. Or that something had to be done about it?

A. No, sir.

Q. Did you attend any of the meetings?

A. I never attended any meeting.

Q. Where were you during the period of time meetings were held?

A. There were two or three meetings held when I was out on trips, all except one and I could have attended at that time but my transportation was taken away about the time I got ready to leave for the meeting.

Q. You mean your private automobile?

A. No, I was riding a bicycle at that time, staying at my sister's place, and when I went out to get on the bicycle, the kids had beaten me to the bicycle.

Q. So you didn't have any way to get out?

A. That's right.

(Testimony of R. E. Miller.)

Q. And didn't go to that meeting?

A. That's right.

Q. Had you ever heard Mr. Rice discuss accidents? A. No, sir.

Q. You have known of a number of accidents?

A. Yes, sir.

Q. You knew it was necessary, did you not, that the Company carry insurance?

A. Yes, sir. [709]

Q. You knew there was a possibility of trouble with the insurance company if too many accidents occurred?

A. I didn't know what the ratio was on accidents—how many they allowed.

Q. On the 14th of November when you were discharged, Mr. Rice told you, I understand, that it was because the insurance had been cancelled?

A. That's right.

Q. Did he tell you anything else with reference to it?

A. That is all, just that our insurance was cancelled.

Q. He called you up in the morning and told you to come out? A. Yes.

Q. And you went out? A. Yes, sir.

Q. And a check was given you then?

A. No, sir.

Q. How long—

A. Checks were issued about noon of that day but I had come before that and didn't go back for mine until Monday.

(Testimony of R. E. Miller.)

Q. What time did you go out on the morning of the 14th? A. Over to the garage?

Q. Yes.

A. I imagine it was about ten o'clock.

Q. Did you see other drivers there then? [710]

A. Yes, Ayers was there when I got there, Kenneth Brower soon came, Carl Hill soon arrived, John Evans, there were several.

Q. Did you go right in and see Mr. Rice then?

A. He was outside the garage.

Q. Talking with the boys?

A. No, he either saw me coming or was coming out and met me or happened by.

Q. He met you as you came up?

A. Yes.

Q. And told you this? A. Yes.

Q. And you didn't go into the office?

A. No, sir.

Q. You turned around and went back home?

A. After chatting with the boys a while.

Q. Then on Monday following this you went out to get your check? A. Yes.

Q. And it was given to you? A. Yes.

Q. When did you next see Mr. Rice or Mr. Henninger? A. After Monday?

Q. Yes, following that Monday?

A. Well, I don't recall. I saw Mr. Henninger one day when [711] I just went over more or less visiting around.

Q. What day was that?

(Testimony of R. E. Miller.)

A. Well, I couldn't say.

Q. Do you recall Mr. Henninger calling you up and asking you if you wanted to work?

A. That's right, yes.

Q. When was that?

A. That was sometime before Christmas, just a few days prior as I remember it.

Q. Of 1941? A. Yes.

Q. And you went out to see him about it?

A. Yes, sir.

Q. When you went out, what did Mr. Henninger say to you?

A. He offered me a job on the loading dock?

Q. Did he tell you what the wage would be?

A. Yes.

Q. What did he say?

A. 60c an hour until I think six months, then he would raise me, I think, it was 65 or 70c, I don't remember which.

Q. That would be for 40-hour week?

A. Yes.

Q. And time and a half for overtime?

A. I imagine it was. There was nothing said.

Q. It always had been that way? [712]

A. Yes.

Q. In other words, whenever you worked there on the hourly basis you worked on a 40-hour week with time and a half for overtime?

A. Well, we had up until July.

Q. I mean when you were on the hourly basis?

(Testimony of R. E. Miller.)

A. I didn't know whether the loading dock worked at time and a half or not.

Q. That was how many days before Christmas?

A. Well, I don't recall. It might have been a week or it might have been ten days.

Q. What did you tell Mr. Henninger?

A. Well, I told him the Union wouldn't let me.

Q. Were those the words you used?

A. Well, I believe so.

Q. You meant the Union had told you not to go to work for them?

A. Well, actually nobody in the Union had told me not to go to work, but Boyd Cornia had been called for the same work at the same time and he had gotten in touch with the Union man and I in turn asked Boyd to see what he had found out, and that is what he told me, that the Union said not to take it.

Q. What official of the Union told him, did he say?

A. As I understand it, Tom Brandt, who had talked to [713] August Rosqvist.

Q. Did they give any reasons for your not taking it?

A. Well, we had joined the Teamsters' Union and they told us we didn't have to take anything unless it was driving.

Q. And for you not to take anything else?

A. That's right.

Q. Was that the reason why you refused employment at that time?

A. Yes, sir. [714]

(Testimony of R. E. Miller.)

Q. But it was in March that you were offered employment by the refining company as a truck driver? A. Yes.

Q. You undertook that and have been with them since? A. Yes.

Q. Now, I understood you to say that when Mr. Henninger hired you, he merely asked that so far as any Union talk was concerned, if you belonged to the Union?

A. He asked me how I stood with the Union.

Q. That was in the conversation that you had with him? A. Yes, sir.

Q. And was that after he had hired you?

A. Well, I would say that it was. He told me to get my shoes on, then asked me how I stood with the Union.

Q. But you then understood you had already been hired when he asked you that question?

A. That was my impression.

Q. It was just a casual remark?

A. I took it to be that.

Q. He didn't say that a member of the Union would not be given the same chance—— [716]

A. When I went over to work on the loading dock he said he didn't care whether I belonged to the Union or not.

Q. In that first conversation he told you he didn't care if you belonged to the Union or not?

A. As far as working on the dock was concerned.

Mr. Penfield: I think that was the subsequent conversation. It wasn't the first conversation.

(Testimony of R. E. Miller.)

Trial Examiner Riemer: We will let the witness testify. Clear it up.

Mr. Merrill: We will clear that up.

Q. (By Mr. Merrill): At the time Mr. Henninger told you he didn't care whether or not you belonged to the Union, that was in December when you went out on the dock and he offered you a job working on the dock? A. Yes.

Q. And he told you then he didn't care whether you belonged to the Union or not?

A. When I told him the Union would not let me work there he said he didn't care whether I belonged to the Union or not.

Q. And the only reason then that the Union matter came up the second time was because of this first discussion?

Mr. Leicht: I object to that as calling for a conclusion from this witness.

Trial Examiner Riemer: Overruled. [717]

A. Well, he had been kidding me pretty heavy about the Union and I imagine that is why he asked me.

Q. What do you mean by kidding?

A. When I refused that other job he asked if the Union would pay my grocery and pay my coal bill.

Mr. Leicht: I object to that as being improper.

Mr. Merrill: That is an explanation.

Trial Examiner Riemer: Overruled.

Q. (By Mr. Merrill): Now, then, isn't it a fact, Mr. Miller, that in the conversation in March, 1942, to which you have made reference, the remark which

(Testimony of R. E. Miller.)

Mr. Henninger made about how you stood with the Union, was a mere casual remark induced by the prior conversation in which he said he didn't care whether you belonged to the Union or not?

A. Well, I took it to be that at the time.

Trial Examiner Riemer: What does the Board contend as to that remark, "How you stood with the Union"? Do they contend that constitutes an 8-1 violation?

Mr. Penfield: We contend the whole thing taken together is a violation of the Act.

Q. (By Mr. Merrill): How did the item of the withdrawal card come up in that conversation in March, 1942?

A. He asked me how I stood with the Union.

Q. That was the first time the Union had been mentioned, wasn't it? [718]

A. That night?

Q. Yes. A. Yes.

Q. And you had already been hired?

A. Well, I took it I was hired. He told me to get my shoes on as soon as I came over.

Q. You understood when he made that comment as to how you stood with the Union that it was a casual remark induced by the conversation you had had with him in December, 1941?

A. Well, that is the way I took it.

Q. And that you merely made the comment that you had a withdrawal card?

A. Yes, sir.

Q. And he said nothing more?

A. That's all that was necessary.

(Testimony of R. E. Miller.)

Q. You said, "I will show it to you if you want me to"? A. That's right.

Q. And he said, "I don't want to see it"?

A. I asked if he wanted to see it, and he said, "No, as long as you have it that's all that is necessary".

Q. Now, in your opinion, did the matter of Unionism have anything whatever to do with your hiring?

Mr. Leicht: I object to that as calling for a conclusion of the witness, plain and simple. [719]

Trial Examiner Riemer: I would like to have the witness' opinion. Overruled. Read the question.

(The last question was read.)

A. Well, I would say that I was hired but the question of Union came up——

Q. Well, I will put it this way: If you had been a member of the Union, do you have any thought that Mr. Henninger would have refused to employ you?

A. Well, that would be a matter of opinion.

Q. Yes, after March, 1942?

A. Well, I don't know whether it would or not.

Q. You had no information from him that he would? A. I had no information, no.

Q. In the light of what he had said to you in December, do you have any idea that your membership in the Union would have made any difference?

A. Well, of course, the loading dock was not Union.

(Testimony of R. E. Miller.)

Q. No, but he told you in December that it didn't make any difference whether you belonged or not, to him, and he never had said anything different from that to you?

A. No, not to my knowledge.

Mr. Moyle: We think that is all.

Redirect Examination

By Mr. Leicht:

Q. At the time you were offered the job on the loading dock you said nothing was said about time [720] and a half?

A. Not to my knowledge. [721]

Recross Examination

By Mr. Merrill:

Q. When you went up to the Union to join, did Mr. Archibald go with you? A. No, sir.

Q. Was he influential in getting you to join or not or do you know anything about it?

A. Oh, he might have been, but there is no need of giving him any credit, it was of my own free will.

Q. All your own free will? A. Yes. [722]

Redirect Examination

By Mr. Leicht:

Q. Did Mr. Archibald talk with you about the Union?

A. He asked me what I thought about it.

Q. In December, 1941, Mr. Henninger didn't offer you a job as truck driver, did he?

A. No.

Mr. Leicht: That is all.

(Testimony of R. E. Miller.)

Q. (By Trial Examiner Riemer): Mr. Miller, you testified to a conversation about March 13th or 14th with Mr. Rice, do you remember that?

A. Yes.

Q. You testified in the course of that conversation Mr. Rice referred to a meeting that was held in July? A. Yes, sir.

Q. What meeting was that?

A. That is when the hourly basis was changed to a monthly basis, when the drivers were put on a monthly or straight salary.

Q. Did you attend that meeting?

A. No, sir.

Q. Did you hear the witness Merrill testify?

A. Part of it.

Q. Do you know Stanley Merrill?

A. Yes, sir. [723]

Q. Did you hear him testify about a meeting that was held at the plant, attended by truck drivers and by Mr. Gilbert Moyle and Mr. Rice, did you hear him testify about that meeting?

A. I heard him say something—I came in during that.

Q. Did you hear him testify that at this meeting Gilbert Moyle advised the truck drivers they would be paid thereafter on a monthly basis?

A. I don't believe I came in while he testified to that meeting.

Q. I am wondering whether that is the July meeting that Mr. Rice allegedly referred to in his conversation with you—do you know?

(Testimony of R. E. Miller.)

A. I imagine it was that meeting.

Q. You did not attend that July meeting?

A. No.

Q. (By Mr. Leicht): Was there dissatisfaction among the drivers after that change in the wage scale?

A. Yes, sir, I would say there was.

Mr. Leicht: That is all.

Recross Examination

By Mr. Merrill:

Q. Was the hourly time of the drivers after that meeting less or more?

A. It was less. [724]

LOREN R. McBRIDE

was called as a witness herein by and on behalf of the Board, being duly sworn, and testified as follows:

Direct Examination

Q. (Trial Examiner Riemer) Where do you live?

A. Baker, Oregon, at present, that is my home address.

Q. (By Mr. Penfield) Where are you employed at the present time?

A. Inland Empire Refineries of Spokane.

Q. Do you know Mr. R. E. Stiff?

A. Yes.

Q. Did you ever work for Mr. Stiff?

A. Yes, sir.

Q. When did you first work for Mr. Stiff?

(Testimony of Loren R. McBride.)

A. Truck driving I worked for Mr. Stiff in 1935.

Q. You were driving one of his trucks, you say?

A. Yes, sir.

Q. Who paid you? A. Mr. Stiff.

Q. Where were you working?

A. The Dalles, Oregon.

Q. How long did you continue to work in this manner? [731] A. From 1935 until 1938.

Q. About what time in 1938?

A. In the fall of 1938.

Q. Did any change occur at that time?

A. Yes, sir.

Q. What was this change?

A. Mr. Stiff leased two of his trucks to the Husky Refining Company.

Q. Did you continue to drive the trucks?

A. Yes, sir.

Q. Who was paying your wages?

A. Husky Refining Company.

Q. Where were you working?

A. Out of Idaho Falls.

Q. How long did this arrangement continue?

A. During the winter months of that winter until the spring of 1939, about February.

Q. What occurred in February?

A. Well, Mr. Stiff took his trucks back and discontinued his haul for the Husky Refining Company.

Q. What did you do?

(Testimony of Loren R. McBride.)

A. I came down to Pocatello and secured a job with the Idaho Refining Company.

Q. In what capacity? A. As truck driver. [732]

Q. Where were you working, out of Pocatello?

A. Yes, sir.

Q. This was in February, 1939, you said?

A. Yes.

Q. How long did you continue to work for the Idaho Refining Company?

A. For approximately a year and a half.

Q. That is out of Pocatello? A. Yes, sir.

Q. What change occurred at the end of that period? A. I quit.

Q. What was the next position you had?

A. I went back to Baker and worked for Mr. Stiff.

Q. About what time did you commence work for Mr. Stiff? A. July of 1940.

Q. Were you being paid by Mr. Stiff?

A. Yes, sir.

Q. Were you driving a truck?

A. Yes, sir.

Q. How long did you continue to work in that manner? A. Eleven months, until June.

Q. What change occurred at the end of this eleven months' period?

A. The Inland Empire Refineries leased two trucks of Mr. Stiff's. [733]

Q. That is, the trucks you had been driving?

A. Yes.

(Testimony of Loren R. McBride.)

Q. Following this, who paid your checks?

A. The Inland Empire Refineries.

Q. How long did this arrangement continue?

A. It started in June and continued until the 10th of October the same year.

Q. Did you testify which year that was?

A. 1941.

Q. What change occurred in October, 1941?

A. Idaho Refining Company took the same two trucks over supposedly.

Q. Did you continue to drive these same trucks?

A. Yes, sir.

Q. Who paid your checks?

A. The Idaho Refining Company.

Q. That is, after October, 1941? A. Yes.

Q. You stated that you commenced to work for the Inland Empire Refining Company in about June, 1941. Can you tell us what sort of work you were doing? A. Truck driving.

Q. Where were you working?

A. Out of Baker.

Q. Will you describe for us just the sort of trips you were [734] making?

A. We worked out of Baker, all drivers on the two trucks, there were five drivers, we went to Umatilla and returned, that is one trip, then on toward Boise, we drove from Baker to Boise Valley and different parts in Boise Valley, Caldwell, and Nampa.

Q. Where would you pick up gasoline?

A. At Umatilla and Attalia.

(Testimony of Loren R. McBride.)

Q. Where did you deliver it?

A. To the Boise Valley, various points.

Q. Including Boise itself? A. Yes.

Q. You stated that in October, 1941, the Idaho Refining Company took over these trucks and thereafter paid you? A. Yes, sir.

Q. Did any change take place in the manner in which you had to work?

A. No, sir, it was the same work.

Q. (By Trial Examiner Riemer) Who gave you orders?

A. The Idaho Refining Company after October 10th.

Q. (By Mr. Penfield) What was Mr. Stiff's relation to you during all this period?

A. He was, well, what you might call straw boss.

Q. When you were working for the Inland Empire? A. Yes. [735]

Q. Was the same true when you drew your checks from the Idaho Refining Co.?

A. Yes, sir.

Q. Did they give you all your directions?

A. Yes, sir.

Q. Did he hire the drivers?

A. Hired and fired. He had that capacity.

Q. Are you a member of any labor organization? A. Yes, sir.

Q. What organization?

A. Teamsters' Union Local 900.

Q. Where is that local?

(Testimony of Loren R. McBride.)

A. Baker, Oregon.

Q. When did you join this organization?

A. The first part of September of 1941.

Q. Was that when you were working for the Inland Empire Refining Company?

A. Yes, sir.

Q. Did you wear a Union button?

A. Yes, sir.

Q. Do you recall any conversation with Mr. Gilbert Moyle in the fall of 1941?

A. Yes, sir.

Q. Can you tell us the time and place of this conversation?

A. It was in Boise, at the Boise Bulk Plant of the Idaho [736] Gas & Oil Company, that is what they call it there.

Q. How did you happen to be there?

A. I was delivering a load of gasoline from Umatilla or Attalia and Mr. Moyle was there.

Q. What was the date?

A. It was approximately the first part of October, 1941.

Q. Was it before or after trucks had been transferred to the Idaho Refining Company?

A. Before they had transferred.

Q. How much before?

A. Just a few days. I would say a week or ten days.

Q. Describe what occurred.

A. Mr. Moyle came up to me and said, "I am taking up the trucks"—Mr. Gilbert Moyle—and

(Testimony of Loren R. McBride.)

he said, "You don't need to think that Union button you are wearing is going to do you any good up there with their bunch", and I said, "Won't it? What if we get your bunch to join?"—the bunch at Pocatello—and he said, "If you do, I will can every one of them".

Q. Did you say anything further?

A. I said,—just let me think a minute—I said, "What will you do for drivers? They are kind of scarce." And he said, "I can get plenty of drivers, and if I can't, I will hire a bunch of old women to drive them."

Q. Did that conclude your conversation?

A. Yes. [737]

Q. You testified that following October 10th you were on the payroll of the Idaho Refining Company driving trucks under Mr. Stiff?

A. Yes.

Q. Were you working out of Baker all that time? A. Yes, sir.

Q. How long did that arrangement continue?

A. From October until about the 13th or 15th of July of 1942.

Q. Did you hear anything in regard to a change in your work in the early part of January?

A. Yes, sir.

Q. What did you hear?

A. Mr. Stiff informed us that the Inland Empire Company was going to quit operating trucks and the Idaho Refining Company was going to take

(Testimony of Loren R. McBride.)

them over right away. Did I say October or January?

Q. You said January.

A. No, that was what took place in October.

Q. Well, what occurred in January?

A. In January Mr. Stiff informed us drivers that we were going to move the trucks up to work out of Pocatello and we would be stationed in Gooding, Idaho.

Q. Would you state about what time in January you first heard this? [738]

A. Approximately the first part of January.

Q. Did you get the trucks ready?

A. Yes, sir.

Q. Do you recall any conversation with Mr. Stiff immediately prior to your leaving?

A. Yes, sir.

Q. Where did this conversation occur?

A. It happened in Mr. Stiff's service station in Baker.

Q. About what time was it?

A. Time of day?

Q. Well——

A. It was just before the middle of January along about the 11th or 12th of January.

Q. Who else was present?

A. There were four of we drivers there.

Q. Who were these drivers?

A. Lester Peck was one—I will have to think a minute—Dewey Ray was another. I can't think of the other one now.

(Testimony of Loren R. McBride.)

Q. There was one more driver?

A. Yes, there was four of us.

Q. Who was employing these drivers at that time?

A. They had been on the Inland Empire Refining Company—we went on the Idaho Refining Company at that time in January.

Q. Had they been doing the same sort of work you had been doing out of Baker? [739]

A. Yes, sir.

Q. And were being paid by the Idaho Refining Company? A. Yes.

Q. And working under the direction of Mr. Stiff? A. Yes, sir.

Q. Tell us what conversation took place at the time.

Mr. Moyle: We object to that on the ground it is two or three months after the discharge of the drivers referred to in the complaint.

Mr. Penfield: It isn't specifically alleged in the complaint.

Trial Examiner Riemer: Overruled. Off the record.

(Discussion off the record.)

Q. (Mr. Penfield) Will you tell us what occurred in this conversation?

A. With Mr. Stiff?

Q. Yes. A. Mr. Stiff——

Mr. Moyle: My objection goes to the whole line.

Trial Examiner Riemer: Yes, let the record

(Testimony of Loren R. McBride.)

show a standing objection to the entire line of inquiry and an exception to my adverse ruling.

Q. (By Mr. Penfield) Go ahead.

A. Mr. Stiff had a long distance call and after he had the conversation he turned to us and said he had talked to Mr. [740] Gilbert Moyle at Pocatello and he said we were to come from Jerome to Gooding and work out of Pocatello and our pay was to be \$175 a month. He said he didn't want to pay different wages to us than he did the ones up here in Pocatello. Incidentally, we were drawing union pay out of Baker. This other arrangement wasn't union pay. Mr. Stiff informed us Mr. Moyle said that we were not to mention union in any way, shape or form and not to associate with them—with the drivers at Pocatello in that capacity.

Q. Did he say anything else?

A. That's all.

Q. Did he refer to any difficulties with the union? A. I don't understand.

Q. Did he refer to any difficulties he had had with the union? A. Yes, sir.

Mr. Moyle: I object to that as leading and suggestive.

Trial Examiner Riemer: Overruled.

Q. (By Mr. Penfield) Go ahead.

A. Mr. Stiff told us that Mr. Gilbert Moyle said that he had had some trouble with the laborers in the union capacity, and he didn't want that to occur again. That's why we were instructed to

(Testimony of Loren R. McBride.)

keep our mouths closed about union wages and affairs and various points of the union.

Q. Did that conclude the conversation? [741]

A. Yes, sir.

Q. Did you proceed to Gooding after that?

A. Yes, we agreed to that.

Q. You say you agreed to that.

A. We agreed to accept that wage and come and keep our mouths closed.

Q. Then you proceeded to Gooding?

A. Yes.

Q. How many drivers? A. Five. [742]

Cross Examination

Q. Did you ever during the period of time you worked for Mr. Stiff personally pull gas out of the Pocatello Refinery? A. Yes.

Q. While you were working for Mr. Stiff?

A. Yes.

Q. And you became acquainted with the Idaho Refining Company truck drivers? A. Yes.

Q. And you knew them while you worked for Stiff and before you went to work for the Inland Empire Refining Company? A. Yes. [751]

Q. And you knew them while you were working for the Idaho Refining Company?

A. In 1941 or previous?

Q. Well, both. A. I did, both.

Q. And you knew them at the same time you were driving for the Husky, did you not?

A. Yes.

(Testimony of Loren R. McBride.)

Q. All the driving you did for the Husky brought you into the territory supplied likewise by the Idaho Refining Company?

A. Yes, and incidentally we hauled to the Idaho Refining Company. [752]

Q. (By Mr. Moyle) Now, when you first came to work for the Idaho Refining Company on October 10, 1941, you belonged to the Union?

A. Yes, sir.

Q. And you were hired by the Idaho Refining Company and were wearing a Union button at that time?

A. Yes, sir.

Q. And from then on until January 15th you made your headquarters in Baker?

A. Yes, sir.

Q. And operated from Baker into the Boise territory?

A. Yes, sir. [753]

Q. At the same time you were hauling into Boise there were trucks coming from the Pocatello area into Boise with other products?

A. Yes.

Q. You met these truck drivers in Boise?

A. Occasionally, yes.

Q. You knew them?

A. Some of them.

Q. And they knew you?

A. Yes.

Q. And they knew you belonged to the Union?

A. Yes.

Q. And up to that time you had just as much opportunity to discuss Union matters with them if you desired?

A. I did.

Q. And nobody had ever restrained or restricted

(Testimony of Loren R. McBride.)

you or made any suggestion to you that it would be against the wishes of the management if you discussed union matters with them? A. No.

Q. Did Mr. Moyle say what he did to you in Boise joking with you? A. What?

Q. Was he in a jovial mood?

A. Well, he canned all the drivers. [754]

Q. I am not asking you whether or not he canned all the drivers, I am asking you whether when you had this conversation with Mr. Moyle in Boise in the fall of 1941, were you and Mr. Moyle joking with each other—kidding?

A. No, sir, and by my answer I feel he meant what he said.

Q. You don't think he was kidding when he said, according to your statement, "I will get some old women if necessary"—you thought he was serious? A. Why, sure.

Q. And he wasn't joking or kidding with you?

A. No.

Q. Was anybody present then.

A. There were men in the plant. I don't know that they heard.

Q. Who were in the plant?

A. Well, Roy Williams for one and Mr. Cornia, one of the drivers.

Q. Is that Roy Williams who worked for the Idaho or the Roy Williams who worked for the Inland? A. He worked for the Idaho. [755]

FRANK L. COPENING

was called as a witness by and on behalf of the Respondent, being first duly sworn, and testified as follows:

Direct Examination

Q. (By Trial Examiner Riemer) State your name, please. A. Frank Copening.

Q. Where do you live, or where are you stationed now? A. Camp Callan, California.

Q. You are a Captain in the United States Army at the present time, I understand?

A. Yes, sir. [763]

Q. Since when?

A. I have had my commission since June 29, 1935.

Q. When did you enter into active service in the army? A. June 10, 1942.

Q. Prior to June 10, 1942, where were you living? A. Pocatello, Idaho.

Q. For what period of time had you been living in Pocatello? A. From December 1, 1940.

Q. Until your entrance into the Army?

A. Yes, sir.

Q. Prior to December 10, 1940, where did you live? A. Boise, Idaho.

Q. How long had you lived in Boise?

A. Since June 1, 1938.

Q. Have you heretofore been employed by the Idaho Refining Company? A. I have.

Q. When did you enter into the employ of that company? A. June 1, 1938.

Q. At what point? A. At Boise, Idaho.

(Testimony of Frank L. Copenig.)

Q. And in what capacity?

A. As a salesman.

Q. As a salesman, did you have any supervisory powers? A. I did not. [764]

Q. While you were a salesman for the Idaho Refining Company where did you live?

A. At Boise, Idaho.

Q. How long did you occupy that position and live in Boise? A. Until December 1, 1940.

Q. While you were living in Boise, Idaho, did you become a member of the Idaho Refining Company employees—

Trial Examiner Riemer: Call it the association, we will understand.

Q. (By Mr. Merrill): All right, the association? A. Yes, I did.

Q. Do you understand what I mean by the association—the labor association? A. I do.

Q. When did you become a member of this association?

A. As I recall, shortly after I started working for the company.

Q. Was that before you came to Pocatello to live? A. It was.

Q. While you were living in Boise did you ever have occasion to visit Pocatello?

A. On occasions.

Q. During that period of time did you have occasion to attend any of the meetings of the employees of the Idaho [765] Refining Company, or this association? A. Yes, I did.

(Testimony of Frank L. Copening.)

Q. How many? A. One.

Q. Which meeting did you attend?

A. I attended the meeting when Mr. Rosqvist talked to the employees.

Q. Do you remember about when that was?

A. Well, to the best of my recollection it was the latter part of 1938 or the first part of 1939.

Q. In Pocatello? A. In Pocatello.

Q. Have you been here during the hearing?

A. Yes, I have.

Q. Is that the meeting to which several witnesses have referred, if you know?

A. I believe it is the meeting, yes.

Q. How did you happen to be present at that meeting?

A. Well, on occasions I came to Pocatello. My territory was as far as Burley and I would be called in and I happened to be in on that occasion and they informed me there was a meeting in the office—in talking with the boys—so I drove out that evening and attended the meeting.

Q. Did you come especially for that meeting, or attended as an incident of your being here? [766]

A. An incident of my being here.

Q. Well, relate just what occurred at the meeting.

Trial Examiner Riemer: I understand the witness was a salesman at that time.

The Witness: Yes, sir.

Q. (By Mr. Merrill): And at that time I understand you had no supervisory powers whatever?

(Testimony of Frank L. Copening.)

A. That is correct.

Q. All right, explain the happenings of the meeting, Mr. Copening.

A. Well, as I recall, the meeting took place in the evening sometime between 7:30 and 8:00 o'clock and I arrived in the office, and there were quite a number of the employees there and we met in one of the front offices and Mr.——

Q. At this point could you give us an estimate of the number of the employees that were there?

A. Well, I would say between 40 and 45.

Q. And where did you meet?

A. In the front office.

Q. The front office of the Idaho Refining Company—on the property?

A. On the property, yes.

Q. Who aside from the employees came into the meeting? A. Mr. Webb. [767]

Q. Who was Mr. Webb?

A. He was secretary of the company.

Q. Where is he at the present time?

A. He is in the Army.

Q. Now, tell me who else was there aside from the employees.

A. There was Mr. Webb and Mr. Rosqvist and one other gentleman.

Q. Do you know who was with Mr. Rosqvist?

A. I don't recall his name.

Q. Then what happened?

A. Well, Mr. Webb introduced Mr. Rosqvist and the other gentleman and told us that they were

(Testimony of Frank L. Copening.)

there to explain the union, and he requested we give our attention to them and it was immaterial to him what action we took—we could join or we could not join.

Q. You could what?

A. We could join or we did not have to join—that the meeting was held at the request of Mr. Rosqvist, and to pay attention to what he had to say.

Q. Did Mr. Webb say anything about the members exercising their own free agency in that matter?

A. He said whatever we did was up to us.

Q. And what did Webb do ?

A. He left the meeting.

Q. Then what happened? [768]

A. Mr. Rosqvist took the floor and talked to us.

Q. Did the other gentleman speak, if you remember?

A. I don't recall that he did. However, he may have.

Q. And how long did Mr. Rosqvist speak?

A. I would say thirty minutes.

Q. Following his talk, were there questions?

A. He asked us if we had any questions.

Q. And what was said?

A. There was some questions asked him.

Q. Then what occurred?

A. He left the meeting and there was a general discussion among those present.

Q. Following the discussion, what occurred—just a moment, when he left the meeting did the other gentleman you referred to who was with him leave?

A. Yes, they did—both of them left.

(Testimony of Frank L. Copening.)

Q. After they left, was there anyone in the meeting other than the employees of the company?

A. There was not.

Q. Then what occurred after Mr. Rosqvist and his companion left and a discussion was had among the members?

A. We voted as to whether or not we wanted to join the union.

Q. Do you recall the result of that vote?

A. It was unanimous that we did not. [769]

Q. Was there some for joining, if you recall—I believe some witness said two or three—

A. Well, it was practically unanimous. I believe there was one or two or perhaps three votes in favor of a union.

Q. Who presided at the meeting?

A. Well, I can't recall at this time because it was the first meeting I had attended and my trips to Pocatello had been so infrequent that I didn't know them very well.

Q. State whether or not Mr. Webb made any statement in substance or effect that it wasn't necessary that you join any union because the company had an association or that there was an association there that they could join if they wanted to?

Mr. Penfield: We object to that as a very leading question.

Mr. Merrill: Well, I am directing the witness' testimony to some testimony heretofore introduced. It is necessary to be somewhat leading.

Trial Examiner Riemer: Overruled.

(Testimony of Frank L. Copening.)

Mr. Leicht: I don't think that that is a very good quotation of the testimony.

Trial Examiner Riemer: Read the question.

(Last question read by reporter.)

Q. (By Mr. Merrill): And that the company could do as much for them as a union? [770]

A. I recall no such statement by Mr. Webb.

Q. Either in substance or effect?

A. That is correct.

Q. Following that meeting I assume you went back to Boise? A. The next day.

Q. Did you continue your membership in the association? A. I did.

Q. Then you came to Pocatello, I understand, in the fall of 1940? A. December.

Q. And when you came to Pocatello, what position did you assume at the Idaho Refining Company? A. I was promoted to Secretary.

Q. When did you assume the office of Secretary?

A. December 10, 1940.

Q. And held the office until——

A. June 10th of this year.

Q. 1942? A. 1942.

Q. Now, during that period of time did you maintain your membership in the association?

A. I did.

Q. Did you ever attend any of the meetings?

A. I did not.

Q. Did you ever attend any of the committee meetings? [771] A. I did not.

Q. Did you ever take any part in the activities of this association? A. No, sir.

(Testimony of Frank L. Copening.)

Q. Why did you maintain your membership?

A. Well, I had started as a member and I maintained it for the benefits.

Q. To what benefits do you make reference?

A. To the sick benefits.

Q. Had you continuously paid your dues?

A. Yes, sir.

Q. And I understand there were certain sick benefits available to those who had paid their dues?

A. There were.

Q. Now, during that period of time, while you were secretary, did you ever have any contacts with the association or its members or committees—

A. No.

Q. In any business way? A. No, I did not.

Q. To your knowledge, was there ever any attempt on the part of the officers of the company or yourself to in any sense influence anything that that association or its members did or attempted to do?

Mr. Penfield: I object to that on the ground it calls [772] for a conclusion of the witness.

Trial Examiner Riemer: I will permit it, as I have permitted similar questions before, and overrule the objection. I will be consistent and overrule the objection again. Read the question.

(Last question read by reporter.)

A. There was not.

Q. (By Mr. Merrill): Now, your duties as secretary, did you remain constantly in the office or were you outside?

A. I was outside the office quite a good deal.

(Testimony of Frank L. Copening.)

Q. What percentage of your time would be outside the office?

A. I would say at least two days a week.

Q. And where would you be?

A. All over the state.

Q. How did you travel? A. By car.

Q. Did you know the drivers of the trucks?

A. I did.

Q. Did you intercept them or meet them on your travels on the highways? A. Yes.

Q. Relate what you saw at various times?

A. Well, without exception when I would leave Pocatello and leave for Boise or Salmon City or West Yellowstone or [773] Salt Lake, I would pass our trucks. Very often I would wave my hand and stop the truck and ask the driver where he was going or where he had been, and I would see them stopped in front of cafes along the road and when I would see one of our trucks I would stop and go in. I always stopped when I saw them changing a tire or if there was any trouble with the truck, and I would talk with them, and on some occasions I would tell them to hurry back to the plant, that we needed the trucks, and on other occasions I would tell them when I passed them to slow down and on some occasions I would ask them why they were in the cafe or why they were stopped, that we needed the trucks at the plant and to get back.

Q. What observations have you made, if any, of the various drivers visiting hamburger stands, beer stands and other places?

(Testimony of Frank L. Copening.)

A. We had some trouble with the drivers stopping too long in hamburger stands and we told them at one of our meetings that we wanted them to eat their breakfast or dinner before they reported to work so it wouldn't be necessary for them to stop after they had only traveled 25 or 50 miles from the plant.

Q. What, if you know, would occur after they had spent time in these places?

A. Well, they would gun their truck and try to make up lost [774] time.

Q. What do you mean by gunning the truck?

A. Well, operate it at a high rate of speed.

Q. What is the fact as to whether or not you had criticized drivers for that practice?

A. I had criticized them for that on the road and we had also taken it up at our meetings.

Q. To what meetings do you refer?

A. The meetings we held with the drivers.

Q. How often would these meetings occur?

A. Well, I would say the meetings occurred approximately one every two months, sometimes maybe a little oftener, and sometimes not quite so often. It depended a good deal on the occasion that required the calling of the meeting.

Q. At the meetings, who were usually present?

A. Well, the drivers that were in and available for the meeting, and Mr. Moyle was there, and Mr. Kermit Rice attended most of the meetings and I attended most.

Q. What was the purpose of the meetings?

(Testimony of Frank L. Copening.)

A. To instruct the drivers in what we wanted them to do, calling their attention to certain facts and sometimes we had complaints from the customers.

Q. Was there a general course of instruction?

A. No, there was not. We talked about several things.

Q. What if anything was ever said at these meetings concerning accidents?

A. Well, that was brought up when we informed them that we were not able to replace trucks when they were wrecked and that it was always a loss suffered by the company regardless of our insurance, and we wanted them to drive carefully, take all the time necessary and to take no unnecessary chances and to handle the truck as if it was their own car so that it would last.

Q. How frequently were the drivers given this warning or advice?

A. I would say that while I was in the office we held the meetings at least every two months—there would be at least six meetings during the year. It could have been six or seven or it could have been five but I would say every two months at least.

Q. Do you recall instances where any specific caution was given or anything said about the danger of continuing the practices that you have mentioned?

A. Yes, we have told the drivers that while we like them all and we were apparently getting along very nicely, and their trucks were doing a good job,

(Testimony of Frank L. Copening.)

we couldn't stand to have wrecks because of the fact the law required us to keep our trucks insured, and without insurance, regardless of the equipment we had or the drivers, we couldn't roll the trucks. [776]

Q. Do you recall any instance where anything was said to the drivers at any of these meetings or individually touching the possible cancellation of the insurance if these accidents continued?

A. It was discussed at the meeting. I recall one definite occasion after a serious accident we had.

Q. Where? A. At Malta.

Q. Who was the driver? Mr. Henricksen?

A. I think that was his name.

Q. All right.

A. That the insurance wouldn't let us have very many of those wrecks, that they would cancel us out and that we just could not have them.

Trial Examiner Riemer: Is that what you told the truck drivers?

The Witness: Yes, sir, we just could not have the wrecks, it would put us out of business if we didn't have insurance, and the safety measures and the speed of trucks was discussed at all of those meetings, whenever we met. Regardless of whatever else we had to talk to them about, we stressed that.

Q. What type of insurance did the company carry during the two years preceding November, 1941?

A. We had a public liability and property damage, and fire [777] and theft——

(Testimony of Frank L. Copening.)

Q. Collision?

A. Yes, and comprehensive, and the property damage had a deductible feature.

Q. What was the deductible feature?

A. \$100 on trucks and \$100 on trailers.

Q. Explain more fully what that would mean if there was an accident to the truck and the trailer.

A. When the truck was damaged, the first hundred dollars of the damage was paid by the company, and the balance——

Q. You mean by the Idaho Refining Company?

A. Yes, and the balance was supposed to have been paid by the insurance company.

Q. Was that collision insurance?

A. That was property damage, to our trucks. We had collision insurance protecting the property of other people.

Q. That was in the same policy?

A. It was all in the same policy.

Trial Examiner Riemer: That is, the collision insurance was also \$100 deductible—had a \$100 deductible clause? Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (By Mr. Merrill): Mr. Copening, assume there was an accident in which a company truck and a company trailer [778] attached to the truck were each damaged in excess of \$100 to each, which damage was due to a collision or a contact with some object or other item of property, what would be the requirement—what were the requirements of the policy touching on the loss?

(Testimony of Frank L. Copening.)

A. If the loss amounted, we will say for example, \$300, they would deduct \$200—\$100 for the truck and \$100 for the trailer and we would be entitled to \$100.

Q. That is, you assume the loss on the automobile would be \$50, or the truck, and the loss on the trailer would be \$200, what would be the deductions that would be necessary for the company to pay?

A. On the truck we would pay the \$50, on the trailer we would pay the first hundred, and be entitled to reimbursement.

Q. For the balance?

A. For the balance.

Q. When accidents occurred, what did you do with reference to making reports?

A. Well, when the accident would happen, they would call up on the phone, the truck driver would if he could get to a phone, or at least it was brought to my attention, and I would call Mr. Turner.

Q. Who is Mr. Turner?

A. Mr. Turner is our insurance agent here in Pocatello.

Q. What are his initials—R. S. Turner? [779]

A. R. S. Turner. The usual procedure was, he would say, "Who is the driver involved?" And I would tell him and he would say, "Have him come down to my office" or "Is he out at the plant?" And if he was out at the plant he would come out and interview the driver out there, and from then on the adjuster would come out and they would ad-

(Testimony of Frank L. Copening.)

just the loss, decide on whether it would be fixed in our shop or taken to some other shop, and those details on adjustments from then on were handled by Mr. Moyle. [780]

Q. Who was carrying the insurance up until November 13, 1941—along in there—1941? [785]

A. The Firemen's.

Q. The Firemen's?

A. The Firemen's Insurance Company.

Q. Was the Metropolitan Insurance Company likewise interested?

A. Yes, there are two names.

Q. A joint policy?

A. Yes, a joint policy. We always referred to it as the Firemen's.

Q. Was that policy discontinued?

A. It was.

Trial Examiner Riemer: Excuse me for interrupting. Are there two policies involved, a collision policy and a property damage policy or did one cover both?

The Witness: One covers both.

Trial Examiner Riemer: Will you clear that up?

Q. (By Mr. Merrill): Do you know the names of the companies that issued the policy to which you make reference?

A. Well, I know it if I heard it.

Q. Do you know whether or not it was the Firemen's Insurance Company of Newark, New Jersey?

A. That I would say is the name of it.

(Testimony of Frank L. Copening.)

Q. And also the Metropolitan Indemnity Company, or some such name as that?

A. There were two names on the policy. [786]

Q. I hand you Board's Exhibit 22 and ask you to read the names on the bottom of that.

A. Firemen's Insurance Company, Newark, New Jersey, and Metropolitan Casualty Company of New York, New York.

Q. Are those the companies that carried that insurance? A. They are.

Q. Now, did the one policy issued by those two companies cover all the items of loss to which you have referred, namely, collision, property damage, fire and theft and public liability and comprehensive?

A. Yes, the one policy covered them all.

Mr. Leicht: It seems to me the insurance policy itself is the best evidence.

Mr. Merrill: Yes, we will do what we can with that later.

Q. (By Mr. Merrill): Does the company, if you know, have that policy now?

A. No, that policy was returned as far as I know.

Q. To the issuing agent?

A. To the agent.

Q. When was it returned?

A. Well, sometime between the 15th and 20th of November, I believe.

Q. Of what year? A. 1941. [787]

Q. Now, I call your attention to Board's Ex-

(Testimony of Frank L. Copening.)

hibit 22 and ask you if you have ever seen that before? A. Yes, I have.

Q. When was it first called to your attention?

A. It was laid on my desk November 10th.

Q. What year? A. 1941.

Q. What did you do with it?

A. I immediately after reading it took it in to Mr. Moyle.

Q. Had you heard any warnings that such cancellation as referred to in the telegram might occur?

A. I had heard some—something about a cancellation if our losses continued.

Q. Who had given you that information?

A. Well, our agent, Mr. Turner.

Q. R. S. Turner of Pocatello?

A. Yes.

Q. What had he said to you? [788]

A. Well, on several occasions when I called up Mr. Turner to report a loss, he would say, "This has got to stop or you will be without insurance." He said, "You can't do this like you are, something has got to be done", or words to that effect on three or four or five occasions at least.

Q. Were there ever any comments made touching the discharge of drivers?

A. He had mentioned that if our drivers were the cause of our accidents we should get rid of them.

Q. When this telegram came, I understand you took it in to Mr. Moyle?

A. As I recall, I received it first.

Q. Then after it was taken in to Mr. Moyle,

(Testimony of Frank L. Copening.)

what was the next thing if you remember that occurred with reference to it?

A. I believe that I called Mr. Turner and he said he had received one too, and I said, "What are we going to do?" And he said, "I don't know." He said, "You are in a tough spot." [789]

Q. (By Mr. Merrill): Then what?

A. Well, Mr. Gilbert Moyle and I sat down and discussed the situation and I advised him that we could not keep our trucks on the road without insurance and something had to be done, and be done awfully quick.

Q. At this point, state why you could not keep them on the road without insurance.

A. It is against the I.C.C. regulations to have your trucks on the highway without insurance.

Q. Unless you can carry the insurance?

A. There is a provision that you can carry your own insurance if your financial statement is sufficient to support it.

Q. Was the financial statement of the Idaho Refining Company sufficient to meet the requirements of the I.C.C. rule?

A. No, we could not have met the requirements.

Q. And if you had attempted to operate those trucks without insurance, what would have been the result?

A. Well, we would have been just put out of business. We couldn't operate them without insurance.

(Testimony of Frank L. Copening.)

Q. Then what—did you and Mr. Moyle further discuss the matter?

A. Oh, we discussed it there all day—all morning.

Q. Then what did you do?

A. As I recall, Mr. Gilbert Moyle said that he would get in [790] touch with Mr. Henry Moyle and see what we could do.

Q. What office did Mr. Henry Moyle hold in the company?

A. Mr. Henry Moyle was the vice-president of the company.

Q. And general counsel, was he not?

A. And general counsel, yes.

Q. Was contact made with him?

A. Contact was made with him and he was in Pocatello on the 13th.

Q. Of what month? A. November, 1941.

Q. What time did he come to Pocatello on that day?

A. Well, as I recall, I first saw him about 9:30, or it could have been a little later than that, even, I am not just sure whether it was in the morning or the afternoon.

Q. How long was he out at the company's plant if he came out there?

A. Oh, he was there, as I recall—he was there when I left. I would say he was there three or four hours.

Q. While he was there did you have any conferences touching this matter? A. Yes, we did.

(Testimony of Frank L. Copening.)

Q. Who engaged in those conferences?

A. Mr. Henry Moyle, Mr. Gilbert Moyle and myself, part of the time.

Q. During this period of time had you made inquiry as to [791] whether or not you could replace your insurance?

A. I didn't make any personally.

Q. Do you know whether others had?

A. I understood that attempts were made, and being made to obtain other insurance.

Q. And that was attempted by whom?

A. Mr. Henry Moyle and Mr. Gilbert Moyle.

Q. But you personally didn't make any attempts? A. I made no attempts, no, sir.

Q. Did they make any comment to you in these conferences as to their ability or inability to get other insurance?

A. They said they were having a tough time to get it.

Q. Then what was next done or determined on if you recall in this conference?

A. Well, after discussion back and forth—I was taking care of my details and coming in and out—Mr. Henry Moyle informed me that to make ourselves, to put ourselves in such a position so that we could get insurance we would have to get a new crew of drivers, and said the drivers would have to be discharged.

Q. Then what was done?

A. The drivers were discharged.

(Testimony of Frank L. Copening.)

Q. When was the determination to discharge the drivers arrived at or made?

A. On November 13, 1941. [792]

Q. At about what time, if you recall it?

A. I would say in the afternoon, as I recall.

Q. Mr. Copening, did membership in any union organization or Teamsters' Local 440 or any other organization have anything whatever to do with the determination to discharge the drivers?

A. It did not.

Q. Had there been any discussion of any kind or character touching their membership in any of those organizations?

A. Not as far as I know.

Q. Was there any such discussion at any time with you by any other officer of the company?

A. No, sir.

Q. Or anyone connected with the company?

A. No, sir.

Q. Would you say then that union membership had absolutely nothing whatever to do with the discharge of these drivers or the determination to discharge them?

Mr. Leicht: He has already answered it—I object.

Trial Examiner Riemer: Overruled. Answer it again.

A. It did not.

Q. (By Mr. Merrill): What was the sole reason for the discharge?

A. To enable ourselves to get insurance and keep

(Testimony of Frank L. Copening.)

the company going, keep our trucks on the road, without which we [793] would have been out of business.

Q. Now, what next then occurred after you had arrived at this decision to discharge the employees or the truck drivers, how was it handled or what was then done?

A. Kermit Rice was called and advised the truck drivers would have to be fired.

Q. Was he given the reason?

A. We told him that our insurance was cancelled out.

Q. Who told him that?

A. I think I told him and I said, you will fire the truck drivers immediately. That was the 13th. And I said, "We will pay them to the 15th", which was payday. But he said, "Well, some of the drivers are out of town", and I said, "Well, send for them and deadhead them in and we will cut them off just as quick as we can, because we only have until the 17th to get insurance, and we have to keep the trucks on the road." I told him I would stay in the office that night until 9:30 or 10:00 o'clock and in case any truck drivers came in I would tell them they were being discharged.

Q. Did they come in that night?

A. I believe three came in that night but I am not just positive of that. Some of them came in, however; Mr. Rice discharged them, but I believe three came to my office.

Q. That night, on the 13th?

(Testimony of Frank L. Copening.)

A. That night, on the 13th. [794]

Q. Do you recall who they were?

A. I don't recall the names, no.

Q. When did you commence making out their checks?

A. The checks were started the morning of the 14th.

Q. At what time?

A. I would say about 8:30.

Q. A.M.? A. In the morning.

Q. Who had the duty of making out the checks?

A. Our treasurer.

Q. Who signed them?

A. I could sign checks and the treasurer could sign them and Mr. Moyle could sign them—counter-sign them.

Q. Did you countersign any of these checks?

A. I would say I countersigned some of them, yes.

Q. And on the morning of the 14th did you see any of the truck drivers?

A. Yes, I saw some truck drivers the morning of the 14th.

Q. Where did you see them?

A. I saw them standing out in front of the office and by the new garage.

Q. Did any of them come in the office for their checks, if you know?

A. I believe I recall one or two of them in the office.

(Testimony of Frank L. Copening.)

Q. Did they come in your office or some other office for [795] their checks?

A. None of them came to my office. They came to the treasurer's office. That was right in front of the building by the entrance. Mine was in the back.

Q. Do you recall whether or not any of the employees or truck drivers came in to see you that morning?

A. I don't recall any of them coming into my office that morning. [796]

Q. Now, Captain Copening, I believe it was a policy of the company to permit gas discounts or discounts for gas and oil purchased? A. Yes.

Q. To whom were those discounts allowed?

A. To all employees.

Q. Did membership in the association have anything to do with the allowance of the discount?

A. No, it did not.

Q. Did membership in the association entitle a member to any greater or different courtesy from the company than if they were not members?

A. No, sir.

Q. Now, some testimony has been introduced touching drink dispensers, cigarette machines, I believe, and so forth. Did the company have anything to do with those items? A. No.

Q. To whom were the profits payable from those machines? [805]

A. I understand the association.

(Testimony of Frank L. Copening.)

Q. But are you able to state positively whether or not the company had anything to do with that?

A. The company had nothing to do with it.

Q. Either in putting them in or in the results of them?

A. That is correct.

Q. Or the ownership of them?

A. No, the company did not own them.

Q. Did you know a man by the name of Archibald?

A. Yes, sir.

Q. Who was he?

A. He was a mechanic in the garage.

Q. For what period of time did he work?

A. Most of the period of 1941.

Q. Is the time of an employee kept on the records of the company?

A. Yes, sir.

Q. Does the same become a permanent record?

A. Yes, sir.

Q. Have you checked the records of the company with respect to the time off by Leo Archibald during the period he worked for the company?

A. I have.

Q. Did you make a compilation of the time he was off?

A. I did. [806]

Q. Do you have in court the records of the company from which you made the compilation?

A. Yes, sir.

Q. Are they here available for examination?

A. Yes, sir.

Q. When you made that compilation did you reduce it to writing?

A. Yes, sir.

(Testimony of Frank L. Copening.)

Q. I am handing you what has been marked as Respondent's Exhibit 2, and ask you what it is?

A. It is a recap of the period that Leo Archibald did work from January 25, 1941, to November 13, 1941.

Q. Is that an accurate statement of the number of days during that period of time that he did not work?

A. Yes, sir.

Mr. Merrill: We offer in evidence this tabulation, and we will state to you that the books of the company are here marked with book marks in each instance so you can verify that statement if you care to do so.

Mr. Leicht: When was this made; just recently?

Mr. Merrill: Yes, yesterday, or that is, during the trial.

Trial Examiner Riemer: It is offered in evidence. Is there an objection?

Mr. Penfield: No objection. [807]

Trial Examiner Riemer: It may be admitted in evidence marked in evidence Respondent's Exhibit 2.

(Whereupon the document hereinabove referred to, previously marked Respondent's Exhibit 2, was received in evidence.)

(Testimony of Frank L. Copening.)

RESPONDENT'S EXHIBIT No. 2

LEO ARCHIBALD

Period		Days Off
Jan. 25-31, 1941		1 Sunday
Feb. 1-15, 1941		1 Sunday
Feb. 16-28, 1941		1 Sunday
Mar. 1-15, 1941		1 Sunday
Mar. 16-31, 1941	Mar. 23-24-25-30	4 Sun.-Mon.-Tues.-Sun.
April 1-15, 1941	Apr. 6- 8-13	3 Sun.-Tues.-Sun.
April 16-30, 1941		0
May 1-15, 1941		1 Sunday
May 16-31, 1941	May 18-20-30-31	4 Sun.-Tues.-Fri.-Sat.
June 1-15, 1941	June 1 - 2	2 Sun.-Monday
June 16-30, 1941		1 Sunday
July 1-15, 1941	July 4-5-6	3 Fri.-Sat.-Sunday
July 16-31, 1941	July 28th	1 Monday
Aug. 1-15, 1941	Aug. 10th	1 Sunday
Aug. 16-31, 1941	Aug. 17, 24, 31	3 Sunday (all three)
Sept. 1-15, 1941		1 Sunday
Sept. 16-30, 1941		1 Sunday
Oct. 1-15, 1941		2 Sunday (both)
Oct. 16-31, 1941	Oct. 19th-26th	2 Sunday (both)
Nov. 1-13, 1941	Nov. 2,-9-10-11th	4 Sun.-Sun.-Mon.-Tues.

37

Q. (By Mr. Merrill): I am now handing you Respondent's Exhibit 2, which has been admitted in evidence, Captain Copening, and ask you to state from that exhibit how many Sundays and how many other days Mr. Archibald was not at work during the period of time he was working for the company?

A. He was absent 37 days, and as I got them here, 25 of the days were Sundays and the other 12 days were other days of the week. [808]

(Testimony of Frank L. Copening.)

Q. I believe you mentioned that he received 50c an hour. [809] I would like to have you examine one of the books of the company here in the courtroom and advise if that shows the rate and refreshes your recollection?

A. Well, that is the time sheet on Leo Archibald, shows his rate of pay; his rate of pay is 60c per hour.

Mr. Penfield: During what period?

A. (Continuing): That is the period May 1 to May 15 I am giving you now.

Q. (By Mr. Merrill): 1941? A. 1941.

Q. Look at some other.

A. Well, January 1st to January 15th—no, let's see,—the first part of January, his first check in January was figured on a basis of 50c.

Q. Can you tell when the increase occurred?

A. It increased the first of March.

Q. Of what year? A. 1941.

Q. And thereafter it was how much?

A. 60c per hour. [810]

Q. Do you remember a man by the name of Wayne Douglas? A. I do.

Q. Who was he? A. He was a truck driver.

Q. For the company?

A. Yes, for the Idaho Refining Company.

Q. Do you recall a conversation that you had with him touching any accident?

A. Well, I had several conversations with him.

Q. What was the first one touching any matter pertaining to this inquiry?

(Testimony of Frank L. Copening.)

A. After he had had his wreck over in Weiser, sometime after that he came into the office and informed me that he [811] had been laid off.

Q. When was that, if you know?

A. Well, I would say that was sometime in November.

Q. That he came into the office?

A. Into the office, yes.

Q. When did he have his wreck at Weiser?

A. It was in October, as I recall, 1941.

Q. What was the conversation you had with Mr. Douglas?

A. Well, he said he wanted to go back to work, that he liked working for the company, and I told him that he had had a serious accident over there and it was a wonder that he hadn't been killed and that he had a bad record on that account, and that I doubted that he could get a job driving.

Q. What did he say, if anything?

A. Well, he said that it was too bad that he had had it, but he would like to go to work again.

Q. Did he explain to you the character of the accident?

A. He mentioned to me that he was—should not have been in the town, that he was off his route and also said that he was making a turn too fast, as I recall. I am not sure just exactly.

Q. Of what did the accident consist?

A. He tipped a truck over loaded with gasoline and it run all down the street.

Q. A loss of gasoline? [812]

(Testimony of Frank L. Copening.)

A. A loss of the gasoline and an expensive wreck.

Q. Do you recall a little more definitely when you had this conversation with him?

A. It was either—I had several with him. I would say that it was the latter part of November.

Q. Of what year?

A. 1941, as I recall on one occasion, I think he had just received his check.

Q. Was it on that occasion he discussed with you continued employment with the company?

A. He discussed with me on that occasion and also on subsequent occasions.

Q. Well, on that particular occasion did you tell him why he had been discharged?

A. Well, I don't recall just the exact words, but his wreck was discussed. [813]

And I told him that that wreck would make it hard for him to get a job driving, because he admitted to me that it was negligence that caused it, and I told him that it was too bad. We both agreed that it was. I said, "We just could not hire you, Wayne, on that account."

Q. Was that conversation after the discharge of the group of truckdrivers on November 13, 1941?

A. As I recall, it was very shortly after.

Q. In that conversation, state whether or not you told Mr. Douglas in substance or effect that he was fired the same as the others were fired, referring to this other group?

A. I don't recall that statement. I would say that I did not make the statement.

(Testimony of Frank L. Copening.)

Q. What reason did you ascribe to his being fired at that time? A. His wreck at Weiser.

Q. Had you ever mentioned unionism to him?

A. No, sir.

Q. Had you ever referred to or discussed the item of unionism? A. No, sir.

Q. Some testimony was introduced touching on some talk with service station employees, touching membership in labor unions. I will ask you what are the facts with reference to that matter? Did you ever have any conversation with any service station attendant touching labor unionism, or membership of any employee of the company in a union?

[814]

A. I did not.

Q. Did the subject at any time ever come up between you and any service station attendant anywhere in the territory?

A. I don't recall it ever coming up.

Q. If it had come up, do you think that you would have recalled it?

A. I might—I think that I would.

Q. Did you ever have a discussion with one Merlin Bowman at any time? A. I did.

Q. When? A. My office, in my office.

Q. When was that?

A. Sometime the latter part of November, 1941.

Q. What was that discussion about?

A. He had been hired as a truck driver and was over in my office and I asked him—I asked him his

(Testimony of Frank L. Copening.)

marital status, where he had worked, and his experience, and asked him if he had driven trucks.

Q. What did he say?

A. He answered my questions for me.

Q. Now, was there anything in that conversation about any membership in any labor union or labor organization? [815]

A. No.

Q. Did you ever discuss that point with Mr. Bowman?

A. I did not.

Q. When a prospective employee came to the office to discuss employment, was there an application blank filled out?

A. Yes, sir.

Q. I hand you what has been marked as Respondent's Exhibit No. 3, and ask you what that is, Mr. Copening, if you know?

A. That is an application for employment with the Idaho Refining Company.

Q. On whose behalf?

A. Merlin Bowman.

Q. And whose handwriting is the application in?

A. I would say his own.

Q. Mr. Bowman's?

A. In Mr. Bowman's. [816]

Q. Does it bear his signature?

A. It bears his name here at the top.

Q. I call your attention to the date. Is that accurate?

A. March 30, 1940.

Q. Is that an accurate date, or was it 1941 or 1942?

A. Well, I saw him—the only time I saw him was in November, 1941.

(Testimony of Frank L. Copening.)

Q. Well, how do you account for the date being March 30, 1940?

A. I have no way of accounting for that, unless he had applied for work at that time.

Q. But you are sure that that is Bowman's application? A. Yes.

Q. Now, when application was made for employment, state whether or not the questions thereon to be filled out were usually asked by you?

A. Yes, they were.

Q. I note that it states, or asks for nationality, church, lodge affiliations, marital status, and so forth. Were those questions asked all applicants?

A. They were.

Q. I will ask you whether or not there is anything on there touching union affiliations?

A. Well, lodge affiliation.

Q. I said union affiliation?

A. No, no union affiliation that I can see—no.

[817]

Trial Examiner Riemer: What is the answer?

The Witness: No, there is none.

Mr. Merrill: We offer in evidence Respondent's Exhibit 3. [818]

(Testimony of Frank L. Copening.)

RESPONDENT'S EXHIBIT No. 3

APPLICATION FOR EMPLOYMENT

To IDAHO REFINING Co.

Name—Bowman Merlin
 Last Name First
 Date of birth—Oct. 7 1912
 Church—L.D.S. Lodge Affiliation
 Widowed () Divorced ()
 Address—530 East Landen
 Place of birth—Downey, Idaho
 Race—White
 Nationality—English
 Social Security No. 519-01-4261
 Date—Mar. 30, 1940
 Phone
 Male (X) Female () Married (X) Single ()
 Number of dependents—One
 Number dependent children

Education

Name of School	Location	Course	No. Years Attended	Did You Graduate and Degree Received
Elementary School Arimo, Idaho	Arimo, Ida.	General	8	Yes
High School				
Arimo High School	"	"	2	No
Business School, or College				

(Testimony of Frank L. Copening.)

Application for Employment—(Continued)

Complete Record of Previous Employment

Period Employed From To	Name and Addresses of Employers	Position Held	Salary Received	Reason for Leaving
1 October 1939	Kewanee Coal Co. 427 So. 2nd, Poca., Ida.	Truck Foreman	\$22 wk.	
2 April 21, 1939 June 7, 1939	Duff Reed Twin Falls, Ida.	Cot Skinner	90c per hr.	Job finished
3 May 1938	Olaf Nelson Landen, Utah.	Truck Driver	60c per hr.	Job finished
4 April 1939	Slim Harrington Pocatello, Idaho	Truck Driver	60c per hr.	Job finished

List Three Business References (Not Relatives)

- 1 Name—Mrs. Robert Sharkel
Address—Pocatello, Idaho
- 2 Name—Mrs. Alfred Hohn
Address—Blackfoot, Idaho
- 3 Name—Bush Motor Co.
Address—Pocatello, Idaho

List Three Character References (Not Relatives)

- 1 Name—Mr. R. T. Hole
Address—McCannon, Idaho
- 2 Name—Mr. Floyd Dalton
Address—Lava Hot Springs, Ida.
- 3 Name—Mr. Douglas Fife
Address—Preston, Idaho

Type of work or position desired—Truck Driver
 much experience driving Truck, also have had experience as mechanic. State your qualifications for position—Have had
 Do you have any physical defects?—None
 Hobbies or supplemental interests
 (For special remarks use reverse side)

(Testimony of Frank L. Copenig.)

Q. Mr. Copenig, do you know a man by the name of Trevor Moss? A. Yes, sir.

Q. When did you first become acquainted with him? A. The latter part of November, 1941.

Q. Where?

A. In the offices of the Idaho Refining Company.

Q. Did he work for the Idaho Refining Company? A. He did.

Q. For what period of time, if you know?

A. A matter of three or four months.

Q. Do you recall a conversation with him in your office at the time that he made application for employment? A. I do.

Q. Who was present at that time?

A. My recollection is that Mr. Moss, Mr. Rice and myself were present.

Q. Was there a conversation engaged in?

A. Yes, sir.

Q. Between whom was this conversation had?

A. Between Mr. Moss and myself. [822]

Q. Did Mr. Moyle have anything to do in the conversation or take part in it? A. No, sir.

Q. Could you fix that conversation a little more definitely as to the time?

A. Sometime within a day or so of the 15th of November, 1941.

Trial Examiner Riemer: Read the answer, please.

(Last answer read aloud by the reporter as hereinabove recorded.)

(Testimony of Frank L. Copening.)

Q. (Mr. Merrill, continuing) What was the conversation?

A. I asked him who he had worked for, whether he was married, where he lived, what his habits were, and if he had had any wrecks.

Q. Did he answer those various questions?

A. Yes, he did.

Q. I will ask you to state whether or not you or Mr. Moyle asked him any question or said anything about any membership—pardon me—was Mr. Moyle present?

A. Mr. Moyle was not present.

Q. Who was present? A. Mr. Rice.

Q. I will ask you whether or not you or Mr. Rice asked him in substance or effect whether or not he belonged to any trade union or labor union?

A. No, sir. we did not. [823]

Q. Was the subject of trade union or labor unionism mentioned in that conversation?

A. No, sir.

Q. Did you ever talk to Mr. Moss in which any reference was made to unionism?

A. No, sir.

Q. Did you ever talk to Mr. Moss at any time suggesting or saying anything about any local trade union or his membership therein? A. No, sir.

Q. Did you ever inquire whether or not he was a member of any union? A. No, sir.

Q. Did anyone make such inquiries, Mr. Rice or Mr. Moyle or anyone else in your presence?

A. No, sir.

(Testimony of Frank L. Copening.)

Q. Did you know whether Mr. Ross did or did not belong to any union? A. No, sir.

Q. Did it make any difference to you at all when he was making application? A. No, sir.

Q. If he had belonged to a trade union of any kind, would that have made any difference in his employment? A. No, sir. [824]

Q. Were you out at Mackay, Idaho, if you remember at any time, during the month of August or September, 1941? A. I could have been.

Q. State whether or not in about the month of August or September, 1941, you, Frank Copening, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that the respondent, Idaho Refining Company, would not hire or retain in its employment, truck drivers who belonged to the Teamsters Union? A. I did not.

Q. Did you ever make any such comment to such effect at that, or any other time?

A. No, sir.

Q. Or place? A. No, sir.

Q. Did you make such comment at any other time or place? A. No, sir.

Q. I will ask you whether or not since November 14, 1941, you, Frank Copening, either individually as secretary of the Idaho Refining Company inquired of persons, or any person inquiring for employment as truckdrivers with the Idaho Refining Company, or employees hired as truckdrivers, whether they belonged to or had belonged to the Teamsters Union or any other outside labor

(Testimony of Frank L. Copening.)

organization or advised them that the company was opposed to membership of employees in such unions? A. I did not. [825]

Q. Did you inquire of any prospective employee or truckdriver since November 14, 1941, whether or not they belonged to any union? A. No, sir.

Q. Did you advise anyone during that period of time, or at all, that the company was opposed to membership of employees in such unions?

A. No, sir.

Mr. Merrill: You may cross examine.

Cross Examination [826]

Q. Do you know of the company making any inquiries as to what would be necessary to get new insurance before the 10th?

A. Before the 10th?

Q. Yes. A. No, I didn't.

Q. Do you know of any efforts made after the 10th? A. Yes. [838]

Q. When were those efforts made?

A. Well, I personally called Mr. Turner.

Q. Mr. Turner was agent for the company that had the policy?

A. Agent for the company, and I wanted to know if he represented any other companies.

I did that myself. I don't know what Mr. Gilbert Moyle did, but we certainly discussed it on the 10th when we received this telegram. [839]

Q. You have always been a member of the Association since you worked there, have you not?

A. Practically always—from the first month, I

(Testimony of Frank L. Copening.)

believe, or six weeks. I always understood that any employee could get a discount.

Q. It could have been otherwise, could it not?

A. Not to my knowledge.

Q. You testified in regard to these drink dispensers, and you [850] testified that the company—that all the profits went to the Association, is that correct? A. As far as I know, it is.

Q. Well, you know, do you not, that the company makes all the collections for the Association, do they not?

A. What do you mean by collections?

Q. Well, isn't it a fact that when someone wants to buy drinks or get laundry done, he gets that on credit, and then the amounts are turned over to the Association and deductions are made from his payroll?

A. Deductions are made and paid to the Association, yes.

Q. Isn't it a fact that the entire amount is paid to the Association?

Mr. Moyle: The entire amount of what?

Mr. Penfield: The entire amount of these deductions for purchases of these products, and for laundry. Well, perhaps I can straighten it out a little more.

Q. (Mr. Penfield, continuing) It is a fact, is it not, that the Association has a laundry concession and has a bottled drink concession from which they make a profit, and a tobacco concession, also; that is true, is it not?

(Testimony of Frank L. Copening.)

A. Yes, that is true.

Q. And it is also true that the persons availing themselves of the use of these concessions receive credit, is it not?

A. They can get credit for them, yes. [851]

Q. And it is true that the secretary of the Association notes the amount of the expenditures each month on a sheet of paper for each individual—or rather twice a month—then turns that over to the paymaster, is that not correct?

A. I believe that it is correct.

Q. Then the paymaster makes deductions from the wages of each employee and takes the amount that has been deducted and turns that over to the Secretary of the Association, isn't that correct?

A. I believe that is correct, yes.

Q. How much time does the paymaster have to spend on that? A. I don't know.

Q. It takes considerable time, doesn't it?

A. Well, I don't know.

Q. Well, the deductions take some of the paymaster's time?

A. Well, I don't know. I have never heard——

Q. But it is true, is it not, that the company is making the collections for the Association for the credit that has been advanced?

A. They deduct it from the pay and reimburse the Association.

Q. And they turn it over, turn the money over to the Association? A. Yes.

(Testimony of Frank L. Copening.)

Q. And the Association makes all the profit from these concessions? [852]

A. That is correct.

Q. And if the company didn't do that, the Association would have to make these collections, isn't that correct?

A. They would have to operate on a cash basis, I presume.

Q. Either operate on a cash basis, or make the collections independently?

A. Either one, yes. [853]

Q. (Mr. Penfield) You testified concerning Wayne Douglas. Isn't it a fact that you saw Wayne Douglas shortly after the accident?

A. I saw Douglas on several occasions, yes, I would say I saw him after the accident.

Q. Was that near Weiser?

A. No, I would say if I saw him, it was in Pocatello.

Q. And it is true that Douglas went back to work following that accident, didn't he?

A. I think that he did, for a short period of time.

Q. He went back to work for several weeks?

A. I don't know just how long he did work.

Q. He wasn't discharged right at the time of the accident, was he?

A. No, but it wasn't very long after that he was discharged.

Q. Isn't it a fact that the accident occurred on October 16, 1941?

(Testimony of Frank L. Copening.)

A. I believe that is the correct date.

Q. And it is also true that Douglas was not discharged until November 26th?

A. That is possibly the correct date, too.

Q. It is also true that when Douglas came in, you showed him a copy of that telegram that you received from the insurance company?

A. I don't recall showing it to him. [856]

Q. You might have?

A. I doubt that I did. [857]

Q. I understood you to testify that your insurance policy covered the Covey Gas & Oil Company and the Idaho Gas & Oil Company?

A. There were some units belonging to them that were included on the policy.

Q. Were any Covey truck drivers discharged, if you know?

A. Well, they have no truck drivers.

Q. They have none? [860] A. No.

Q. Who drove those Covey trucks?

A. Lessee accounts, and employees—that was incidental to their work.

Q. Were any Idaho Gas & Oil Company truck-drivers discharged, if you know? A. No.

Q. Do you mean no, you don't know, or no, there were no discharges?

A. There were no discharges. I might add that they had no truckdrivers exclusively engaged in truck driving. [861]

Redirect Examination

Q. It is Covey Gas & Oil Company whose stock is owned—the Covey Gas & Oil Company of Idaho

(Testimony of Frank L. Copening.)

whose stock is owned exclusively by the Idaho Refining Company, I understand? [868]

A. Yes, sir.

Q. While the Idaho Gas & Oil Company is owned by independent stockholders?

A. Yes, sir.

Recross Examination

Q. (Mr. Penfield) You have testified regarding losses on equipment other than that used by the truck drivers driving from Pocatello? [869]

A. Yes, sir.

Q. Do you know who Fred Pierson is?

A. Yes, sir.

Q. Who is he?

A. He is a lessee account at Challis, Idaho.

Q. Do you recall an accident involving Fred Pierson? A. Yes, I do.

Q. When did that occur?

A. It was in the summer, sometime, possibly—

Q. Could it have been June 10, 1941?

A. Yes.

Q. That was a total loss, wasn't it?

A. I think that we finally settled on the basis of a total loss on that truck.

Q. Could it have been a loss of \$1250 claimed, less salvage of \$299? Isn't that correct?

A. As I recall, it was in the neighborhood of a thousand dollars on that loss. I don't recall whether that included the salvage or just the details of it.

(Testimony of Frank L. Copening.)

Q. Well, that loss was paid by the insurance company, was it not?

Mr. Moyle: May the record show that we gave to Mr. Penfield this morning, in addition to what his subpoena called for, the insurance we had pertaining to the Covey Gas & Oil Company and the Idaho Gas & Oil Company. I don't know whether he wants to [870] go through all that list with this witness, but there would be information in there that he could go through it later.

Mr. Penfield: I would like to have the record show that there have been losses on other vehicles than those directly used by the truckdrivers of the Idaho Gas & Oil Company, and that they were covered by the same policy and that they were paid.

Mr. Moyle: I am sure before our case is over, that it will all be brought out in detail.

Mr. Merrill: That Pierson loss was a 1941 tank truck of the Idaho Refining Company.

Trial Examiner Riemer: Proceed by question and answer.

Q. (Mr. Penfield, continuing) Do you know who George White is? A. George White?

Q. Yes.

A. I can't just recall right now—George White.

Q. Do you recall an accident involving a 1939 Chevrolet— a half-ton truck on October 24, 1941?

A. Could that have been at—

Q. Twin Falls. A. What kind of a truck?

Q. A 1939 Chevrolet—1½ ton gas truck.

(Testimony of Frank L. Copening.)

A. I don't recall that particular one.

Q. You have no knowledge as to whether or not there was any insurance claim paid? [871]

A. Not from the information you have given me, I don't no.

Q. Well, that is about all the information there is.

A. I don't recall that.

Q. Do you know Mervin Zollman?

A. I don't recall that name, no, sir.

Q. Do you recall an accident on October 4, 1941, involving a GMC truck of the Idaho Refining Company, an accident occurring there near Mountain Home, Idaho?

A. I recall a wreck that occurred near Mountain Home, yes. Does it mention anything about a horse being killed?

Q. I have no knowledge.

A. I recall a wreck near Mountain Home.

Q. That was in October, 1941, was it not?

A. It could have been. I don't know the exact date.

Q. You don't know who Zollman was?

A. I don't recall that name.

Q. He wasn't one of the drivers driving out of Pocatello?

A. I don't believe he was. I don't recall that.

Q. Could he have been in the employ of the Idaho Gas & Oil Company?

A. I can't place that name.

Q. I think it is Zollmers.

A. I don't recall that name.

(Testimony of Frank L. Copening.)

Q. You do recall something about an accident?

A. There was an accident near Mountain Home, yes, I remember [872] that.

Q. Do you know Charles Crawshaw?

A. I can't place that name.

Q. Do you recall an accident involving a Ford truck owned by the Idaho Refining Company which occurred at Pocatello on October 22, 1941?

A. Ford truck?

Mr. Moyle: Of course, I don't know why the record should be encumbered. I am advised that these are names of third party claimants. I don't know anything about them.

Mr. Penfield: That is not my information. My information is that they were drivers.

Trial Examiner Riemer: It is a legitimate subject of inquiry if Mr. Penfield wants to depend on this. If there is some insurance agent that is going to come in, that is up to him. Read the question.

(The last question was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) Do you recall that? A. What was his name?

Q. Charles Crawshaw, indicated as the driver of the truck?

A. I am not saying that he wasn't an employee, but I doubt that he was a regular truckdriver. I don't recall the name.

Q. Do you know a driver by the name of Wayne Conrad? A. Yes. [873]

(Testimony of Frank L. Copening.)

Q. Do you recall an accident involving Mr. Conrad occurring August 31, involving a 1939 Chevrolet truck belonging to the Covey Gas & Oil Company?

A. Yes, I recall that.

Q. And he was one of the drivers—he was an employee of the Covey Gas & Oil Company—that is correct, is it not?

A. Yes, he was a lessee, I think, at the time.

Q. The loss was paid by the insurance company, was it not? If you recall?

A. As I recall that particular wreck, there was no loss paid to us. The other party received \$33.

[874]

AUGUST ROSQVIST

was thereupon called as a witness by and on behalf of the Board and, being first duly sworn, was examined and testified as follows:

Direct Examination

Trial Examiner Riemer: Will you please state your name?

The Witness: August Rosqvist.

Trial Examiner Riemer: And where do you live?

The Witness: 1246 North Grant, Pocatello, Idaho.

Q. (Mr. Penfield) What is your present position, Mr. Rosqvist?

(Testimony of August Rosqvist.)

A. Secretary of the Idaho State Federation of Labor and the Pocatello Central Labor Council.

Q. How long have you held those positions?

A. 13 and 16 years.

Q. 14 for which?

A. For the State Federation of Labor.

Q. And 16 for the Central Labor Council?

A. For the Pocatello Central Labor Council.

[883]

Q. Was the Idaho Refining Company ever placed on any of these lists? A. Yes, sir.

Q. On which one?

A. On the Pocatello Building Trades Council on May 24, 1939; on the Pocatello Central Labor Union, May 25, 1939; and the Idaho State Federation of Labor, September 20, 1939.

Q. Was that an unfair list, or a non-patronage list? A. Unfair list and non-patronage list.

Q. Do you know why the Idaho Refining Company was placed on [889] this list?

Mr. Moyle: That is objected to as not being within any issue of the case, and not within the offer.

Trial Examiner Riemer: The objection is overruled.

Mr. Penfield: You may answer the question, Mr. Rosqvist.

A. Because the company refused to employ union building trades craftsmen in their alterations or repair work.

Q. Were you ever approached by any officials

(Testimony of August Rosqvist.)

of the company in regard to the company's being placed on these lists? A. Yes, sir.

Q. At what time? A. In the fall of 1939.

Q. And who approached you?

A. Mr. Arch Webb and Mr. John Peterson.

Q. And where did you see them, or how did you see them?

A. Arrangements were made through a committee of the Building Trades Council to meet with them in my office in the Labor Temple.

Q. Who requested the meeting?

A. Mr. Webb of the Idaho Refining Company.

Q. Where did this meeting take place?

A. In my office in the Labor Temple.

Q. And who was present?

A. Mr. Webb and Mr. Peterson, representing the Company, and Mr. Brandt of the Teamsters and myself, and then another member of [890] the Building Trades Council. His name I cannot recall at the present time.

Q. And what occurred at this meeting?

A. Mr. Webb asked information as to how they could be removed from the Unfair List, in order to cooperate with the labor unions and secure the necessary building tradesmen to work.

Q. And what did you tell him?

A. That it would be necessary to sign an agreement to agree to hire only union building tradesmen and to employ union truckdrivers in the distribution of their products.

(Testimony of August Rosqvist.)

Q. Was anything said about your meeting with the employees?

A. At that time, Mr. Webb asked the question as to how his entire plant could be unionized, and we advised him that so far as we were concerned, we were not particularly interested in the whole plant, only the truck drivers and the building tradesmen. However, he desired to have that information and invited us to come out to a meeting at the plant, and explain how they could all be taken over into the A F of L organization

Q. Did you attend such a meeting?

A. Yes, sir.

Q. And when did it occur in relation to the meeting that you have described in your office?

A. Well, it was late in the fall of 1939. The exact date I can't remember, but it was after the firm had been placed on the unfair list by these other organizations.

Q. And where did this meeting take place?
[891]

A. In the office of the plant of the Idaho Refining Company.

Q. And who was present?

A. Mr. Brandt and myself were invited out there and were there at the meeting, and the company employees, truckdrivers and plant employees and officers of the company.

Q. What officers of the company?

A. Well, Mr. Webb was there, Mr. Peterson and Henry Henderson.

(Testimony of August Rosqvist.)

Q. Who is Henry Henderson?

A. I don't know if Henry Henderson was any official. He was, I believe, the head salesman of the product.

Q. How many persons were there?

A. Oh, about 30 or 35.

Q. And did you speak? A. Yes, sir.

Q. Were you introduced? A. Yes, sir.

Q. Who introduced you? A. Mr. Webb.

Q. After his introduction, did Mr. Webb stay in the meeting? A. Yes, sir.

Q. What did you say to the employees?

Trial Examiner Riemer: Will you read that last question and answer, Mr. Reporter?

(Whereupon the last question and answer hereinabove recorded were read aloud by the reporter.) [892]

A. I was asked to explain how they could form an organization in affiliation with us, and I explained the complete set-up, how they could be chartered, all plant employees, by an A F of L organization. The truckdrivers would have to join the truckdrivers organization, and the question was then asked by one of the officials if they could also join, to which I replied that one in an official capacity who had authority to hire or fire, could not join our organization, nor the office force.

Q. Did Mr. Brandt speak?

A. Briefly. He answered questions only.

Q. After you and Mr. Brandt had spoken, what happened?

(Testimony of August Rosqvist.)

A. We were asked to retire, and they would take a vote on whether they wanted to join us, or remain as an Association which they had.

Q. Did Mr. Webb remain? A. Yes, sir.

Trial Examiner Riemer: What was that answer, Mr. Reporter?

(Thereupon the last answer of the witness was read by the reporter as hereinabove recorded.)

Q. Did you retire? A. Yes, sir.

Q. Did Mr. Peterson stay there?

A. Yes, sir.

Q. Were both of them present during the time that you spoke? A. Yes, sir. [893]

Q. Is the Idaho Refining Company still on the non-patronage list? A. Yes, sir.

Q. In the fall of 1941, were you ever approached by any employees of the Idaho Refining Company?

A. Yes, sir.

Q. What employees?

A. Three truck drivers.

Q. Where did you meet them?

A. They called at my office.

Q. Do you recall who they were?

A. Mr. Campbell was one of the truck drivers. I don't recall the names of the other two.

Q. What did they want?

A. They asked for information as to how they could join the truck drivers union.

Q. What information did you give them?

(Testimony of August Rosqvist.)

A. I advised them that if they joined in a group, all of them, then I might be able to get a dispensation for them, to get them in for a half fee, into the truck drivers union.

Q. Did you give them any application cards?

A. Yes, sir.

Trial Examiner Riemer: Mr. Witness, whom did you give the application cards to?

The Witness: To these three truck drivers. [894]

Q. (Mr. Penfield, continuing): Did you have any later meetings?

A. A few days later I had a couple of meetings at my home.

Q. And who attended these meetings?

A. About 10 or 12 truckdrivers.

Q. Was there any persons other than truckdrivers there?

A. There was one machinist.

Q. Do you recall who that was?

A. Mr. Archibald.

Q. About what time was this first approach, and when did the subsequent meetings take place?

A. About the middle of September.

Q. Do you recall about when this meeting at your home at which Mr. Archibald was present took place?

A. About a week—about the third week in September, 1941.

Q. Did you explain what the initiation fee and the dues would be? A. Yes, sir.

Q. And what were those fees?

(Testimony of August Rosqvist.)

Mr. Moyle: These details, Mr. Examiner, we think are not material. The ultimate fact is the fact that they joined.

Mr. Penfield: If you want to stipulate that they all joined, it is all right with me.

Trial Examiner Riemer: What did you say, Mr. Penfield?

Mr. Penfield: I said, if they wanted to stipulate that they all joined the union, it is all right with me. [895]

Mr. Moyle: It doesn't call for any stipulation on our part. We know nothing about it. It was all done in our absence and without any knowledge on our part, or notice of any kind. They are all immaterial details. I don't care, in the final analysis how long we sit here.

Mr. Penfield: I am not going to go into much detail on these meetings, as a matter of fact.

Trial Examiner Riemer: The objection is overruled.

Mr. Penfield: What was the last question, Mr. Reporter?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

Q. What were those fees?

A. \$15 to join the Machinists organization and a half fee to the Teamsters, or \$12.50 a member.

Q. Was anyone appointed to collect the dues, or the initiation fees? A. Yes, Mr. Archibald.

Q. Was that for the Machinists or the Teamsters, or both? A. Both.

(Testimony of August Rosqvist.)

Q. Was he given any application blanks?

A. Yes, sir.

Q. Following these first meetings, was any money ever paid you by the truck drivers?

A. Yes, sir.

Q. Was any money ever turned over to you by Mr. Archibald? [896]

A. Yes, sir.

Q. Did you keep a record of the amounts turned over to you?

A. Yes, I did.

Trial Examiner Riemer: I don't think that that is material. The record of the individual who paid in the amount.

Mr. Penfield: That is true.

Trial Examiner Riemer: Well, go ahead.

(Whereupon a document was marked by the reporter as Board's Exhibit No. 24 for identification.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit No. 24 for identification, Mr. Rosqvist, and ask you if you can tell me what that is?

A. That is a correct financial statement which I submitted to the Teamsters organization of money that I collected, and those who signed up to join that organization.

Q. Does that contain the names of the truck-drivers working with the organization?

A. Yes.

Q. Does it contain the amounts that they have paid?

A. The amounts which they paid to me, yes, sir.

(Testimony of August Rosqvist.)

Q. In this one column, you have, "Amount paid to Rosqvist"; what does that represent?

A. That was money which was paid to me by them, directly or indirectly.

Q. By "indirectly," do you mean through Mr. Archibald? [897]

A. Through Mr. Archibald, who paid a certain amount to my daughter in my absence.

Q. And what is the significance of the column "Amount paid to Brandt"?

A. The amount which was paid to him in my absence.

Q. Did Mr. Brandt have any part in the preparation of this sheet of paper?

A. No, sir, not outside of giving me the information of the amount he had collected at that time.

Q. He gave you the information which appears in this column (indicating)?

A. That is right.

Q. What did you do with this money that was paid to you?

A. Turned it over to the Teamsters organization, 440.

Q. Was this at a meeting?

A. Yes, sir.

Q. Do you recall approximately when this meeting was?

A. About October 27.

Q. I note after the names of the drivers that you have a number of marks in ink, did you make those marks?

A. Yes, sir.

Q. What is the meaning of this checkmark (indicating)?

A. Be present at the meeting.

(Testimony of August Rosqvist.)

Mr. Moyle: I couldn't hear the answer.

(Thereupon the last answer was read aloud by the reporter [898] as hereinabove recorded.)

Q. What is the meaning of the zero after the name of Wayne Douglas?

A. Absent, being out of town that evening.

Q. There is no mark after Chris Gregerson, do you know the significance of that?

A. Just omitted. He wasn't there.

Q. There is a line after the name Wayne Nord?

A. Wayne Nord had not paid any money to me, and therefore could not attend the meeting.

Q. There is no amount after the name "Carl E. Hill"? What is the meaning of that?

A. He made an application, but failed to make payment on the application up to that date.

Q. Do you know if he later made any payment?

A. I have no knowledge.

Q. There is no amount after Victor Ellingford. Do you know the reason for that?

A. The same reason, no money paid to me, and he probably later on paid it to Mr. Brandt. His name was listed. He had made application.

Q. Do you know that he had made application?

A. Yes, sir.

Q. There after the name H. H. Henricksen, there is listed an amount, a sum paid to Rosqvist, and following that, in paren- [899] thesis, the statement saying "no application". What is the meaning of that?

(Testimony of August Rosqvist.)

A. I didn't have the application in my possession. I was advised that the application was made directly to Mr. Archibald, and he was holding it in his possession until he could see,——

Mr. Moyle: We move to strike what advice he received.

Trial Examiner Riemer: Overruled.

Q. Had Mr. Henricksen paid you this sum?

A. \$6.25, yes, sir.

Q. For what purpose?

A. To apply on his initiation.

Mr. Penfield: I offer in evidence, Board's proposed exhibit No. 24.

Mr. Moyle: We object to it as incompetent, irrelevant and immaterial.

Mr. Penfield: I submit that it is a record made by their witness in his official capacity.

Mr. Moyle: It is a self-serving declaration.

Mr. Penfield: Of amounts paid to him for a specific purpose, which is in issue in this case.

Trial Examiner Riemer: Has the witness testified when that document was prepared, Mr. Penfield?

Mr. Penfield: I believe that he did.

Trial Examiner Riemer: I believe that he did, too. Didn't he say about October 27th? [900]

May I see Board's Exhibit No. 3, please, Mr. Penfield?

(Mr. Penfield hands paper to Trial Examiner Riemer.)

(Testimony of August Rosqvist.)

Trial Examiner Riemer: The objection is overruled. The exhibit may be admitted and marked as Board's Exhibit No. 24.

(Whereupon the document heretofore marked as Board's Exhibit 24 for identification, was received in evidence.)

BOARD'S EXHIBIT No. 24

October 27, 1941

OIL REFINERY EMPLOYEES

	Amount paid to Rosqvist.	Amount paid to Brandt
✓ John P. Evans.....	\$ 6.25	\$6.25
— Wayne Nord.....		6.25
✓ A. Stanley Merrill.....	6.25	
✓ R. E. Miller.....	6.25	6.25
✓ James Ayers.....	6.25	
O Wayne Douglas.....	6.25	6.25
✓ Carl E. Hill.....		
✓ Robert W. Patterson.....	6.25	6.25
✓ Howard L. Davis.....	6.25	6.25
✓ Guy Campbell.....	6.25	
✓ Leonard Fowler.....	6.25	
✓ John Ray.....	6.25	
✓ P. P. Stanger.....	6.25	6.25
✓ A. L. Heckert.....	6.25	6.25
✓ Boyd Cornia.....	12.50	
✓ Myron D. Whitesides.....	6.25	6.25
Chris R. Gregerson.....	6.25	6.25
✓ Victor Ellingford.....		
✓ S. R. Burkholder.....	6.25	6.25
✓ H. H. Hendricksen.....	6.25	(no application)
Totals.....	<u>\$106.25</u>	<u>\$56.25</u>
	122.50	
Less	108.00	
	<u>4.50</u>	
✓ Leland Stanford.....	6.25	

(Testimony of August Rosqvist.)

Q. (Mr. Penfield, continuing): Do you note the name Wayne Nord on Board's Exhibit 24?

A. Yes, sir.

Q. Was he an employee of the Idaho Refining Company? A. Yes, sir.

Q. Was he a truck driver?

A. I am not so positive about that. I understood that he was what they call a grease monkey, taking care of the oiling and greasing of trucks.

Q. Would he be eligible for admission to the Teamsters' organization?

A. Yes, I have his application. [901]

Cross Examination

By Mr. Moyle:

Q. Now, you knew at that time,—that when the company built [915] the asphalt unit out there on the respondent's property, that that was built with union labor, as a union job, did you not?

A. Our members weren't working for the company. They were working for a union contractor out of Los Angeles.

Q. And the job was done on a union closed shop basis? A. That is right.

Q. By union labor? A. Yes, sir.

Q. And during all of that time, the refinery continued on the unfair list that you have heretofore referred to? Is that correct? A. Yes, sir.

Q. This asphalt unit was built after the refinery had been placed on the unfair list, as you say?

A. Yes, sir. [916]

BOARD'S EXHIBIT No. 25

RECEIPTS

1. Leo Archibald	\$ 7.50
2. Boyd Cornia	12.50
3. Guy Cambell	6.25
4. Bob Peterson	6.25
5. John Ray	6.25
6. Joe Stanger	6.25
7. W. Miller	6.25
8. Myron D. Whatsides	6.25
9. Howard Davis	6.25
10. Sandy Merrill	6.25
11. Chris Gregerson	6.25
12. Pat Burkholder	6.25
13. Leonard Fowler	6.25

Total.....\$88.75

Bryant collected from

John P. Evans\$ 6.25

Wayne Nord 6.25

Mr. Moyle: At this time, Mr. Examiner, comes now the respondent, Idaho Refining Company, at the close of the Board's case, and after the Board has adduced its evidence in support of the consolidated complaint on file herein, and has rested, and moves that the said consolidated complaint be dismissed upon the grounds that the evidence adduced by the Board fails to sustain the charges contained in said consolidat- [925] ed complaint, or any of them, upon the grounds and for the reasons hereinafter specifically set forth, and that the proof ad-

duced by the Board fails to disclose a violation of the National Labor Relations Act by the respondent;

The respondent further and likewise moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 1 of the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, for the reason and upon the ground that the Board has failed to establish by its evidence an interference by respondent with the right of employees to join said union as they see fit;

And further and likewise moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 2 of the National Labor Relations Act and such portions of the consolidated complaint as pertain thereto, that is to say, the Board has failed to substantiate by its proof any domination or interference with the formation or organization of a labor union, or the giving to any labor union of financial support, in violation of this section of the Act;

And further moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 3 of [926] the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, that the Board has failed by its evidence to substantiate or prove any discrimination by respondent

in regard to hire or tenure of employment, or to offer any proof that respondent has encouraged or discouraged membership in any association or union in violation of said section, and the said subdivision 3 of Section 8 thereof;

And further moves to dismiss the charge of the Board that the respondent has been guilty of unfair labor practices affecting commerce within the meaning of Section 8, subdivision 5 of the National Labor Relations Act, and such portions of the consolidated complaint as pertain thereto, that is to say, the Board has failed to establish by its evidence any refusal on the part of respondent to bargain collectively with representatives of the employees, in violation of said section.

Said motions are based upon the following grounds, and each of them, to-wit:

1. That the Board has failed by its evidence to substantiate or prove that the management of the Idaho Gas & Oil Company is or has been under the supervision, direction or control of the respondent, or that the respondent is or has been an employer of the employees of the Idaho Gas & Oil Company, either within the meaning of Section 2, sub-section 2 of the Act, or at all.

2. That the Board has failed by its evidence to substantiate [927] or prove the allegations of paragraph 5 of said consolidated complaint, or any of them.

3. That the Board has failed by its evidence to substantiate or prove that on any occasion before March, 1940 or thereafter, or at all, respondent has

interfered with, restrained or coerced its employees in the exercise of their rights to self organization or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

4. That the Board has failed in its evidence to substantiate or prove that respondent, either before March 1940 or thereafter, has on any occasion or in any way interfered with the right of its employees to bargain collectively through representatives of their own choosing, or has in any way restrained or coerced them from so doing, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect, but on the contrary, the evidence adduced by the Board affirmatively shows that the employees have bargained collectively when and as they saw fit, without any interference from the company.

5. That the Board has failed by its evidence to substantiate or prove that respondent, either before March 1940 or thereafter at any time has attempted in any way to discourage the membership of its employees in Machinists Local 198, and that any [928] proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent; that, on the contrary, the evidence adduced by the Board shows affirmatively that the one mechanic, Archibald, joined the Union without interference from the Company, and there is no evidence to show that he was in anywise

affected by anything that the Company did, as shown by the evidence, or at all.

6. That the Board has failed, by its evidence, to substantiate or prove, either before March, 1940, or thereafter at any time, that Respondent at any time has attempted to discourage the membership of its employees in Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

7. That the Board has failed by its evidence to substantiate or prove that respondent either before March 1940 or thereafter at any time, has attempted in any way to discourage the membership of its employees in Teamsters Local 983, and that any proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

8. That the Board has failed by its evidence to substantiate or prove that the respondent either before March, 1940 or thereafter, or at any time, has attempted in any way to discourage [929] the membership of its employees in any bona fide labor union, or organization, or any labor organization whatsoever, and any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

9. That the Board has failed in its evidence to substantiate or prove that the respondent, either before or after March, 1940, did anything in violation of the National Labor Relations Act to encourage membership of its employees in the Em-

ployees Association, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

10. That the Board has failed by its evidence to substantiate or prove that respondent, by or through Kermit Rice, inquired of an employee hired as a truckdriver whether he belonged to the Teamsters Union or any labor union, or that he informed prospective employees that the manager of the company was opposed to unions or the membership of employees of respondent in labor unions, in violation of the National Labor Relations Act, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

11. That the Board has failed by its evidence to substantiate or prove that the respondent, either through its general manager, Gilbert Moyle, or its secretary, Frank Copening, or [930] through anyone else, either in the months of August or September, 1941, or at any other time, advised an employee of the Idaho Gas & Oil Company at Mackay, Idaho, that respondent would not hire or retain in its employment truckdrivers who belonged to the Teamsters Union, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

12. That the Board has failed by its evidence to substantiate or prove that either in the month of October, 1941 or at any other time, said respondent

by or through Gilbert Moyle or anyone else, advised an employee of the respondent, either at Boise, Idaho or any other place, that if the truckdrivers employed by the respondent joined the Teamsters Union, the respondent would discharge all its truckdrivers, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

We call attention of the Examiner to the fact that the witness McBride who testified to such a statement, was not an employee of respondent at the time the alleged statement was made to him, but was told that Mr. Moyle was going to hire him in a few days, and Mr. Moyle did thereafter hire him.

13. That the Board has failed by its evidence to substantiate or prove that on November 13, 1941, or at any other time, [931] the respondent, by or through Kermit Rice, inquired of a truckdriver employed by the respondent whether he belonged to Teamsters' Local 440, and whether the other truckdrivers employed by the company belonged to said union, in violation of said Act, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

14. That the Board has failed by its evidence to substantiate or prove that the respondent, on or about September 16, 1941, or at any other time, by or through W. A. Sheppard or anyone else, attempted to induce an employee of the Idaho Gas & Oil Company to report to the respondent whether

truckdrivers employed by Idaho Gas & Oil Company at Boise were members of the Teamsters Union, or advised said employee that employees who joined or belonged to said union would be discharged, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

15. That the Board has failed by its evidence to substantiate or prove that since November 14, 1941, or at any other time, the respondent by or through Kermit Rice, C. E. Henninger, Gilbert Moyle, Frank Copening, or anyone else, has inquired of persons applying for employment as truckdrivers, or of employees hired as truckdrivers, whether they belonged or had belonged to the Teamsters Union, or any other outside labor union, or [932] advised them that the company was opposed to membership of employees in such unions or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

16. That the Board has failed by its evidence to substantiate or prove that in November and December, 1941, or at any time, the respondent by or through Kermit Rice or C. E. Henninger, instructed truckdrivers of respondent to present any grievance they had directly to the management, and not through Teamsters Local 440 or any outside organization or representative, or indicated to said employees that the truckdrivers employed by the company prior to November 14 had been discharged

because they sought to be represented by Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent in this respect.

17. That the Board has failed by its evidence to substantiate or prove that in January, 1942, when certain truck drivers were transferred from Baker, Oregon to Pocatello, Idaho, or at any other time, respondent instructed said employees that they should not engage in any union or concerted activities while employed at Pocatello, or discuss working conditions with other drivers employed by respondent, and that any proof adduced by the Board in connection therewith does not [933] substantiate, prove or constitute unfair labor practice by respondent.

18. That the Board has failed by its evidence to substantiate or prove that any of its employees mentioned in paragraph VI of said consolidated complaint were discharged on November 14, 1941 because of their membership in or activity on behalf of Teamsters Local 440, or for the purpose of discouraging membership in such Teamsters Local 440, or to avoid respondent's obligation to bargain with said Teamsters Local 440, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent; and in this respect, respondent calls the Examiner's attention to the fact that there is no competent evidence in this record showing in any way, shape or form, that

the respondent at any time had any notice or knowledge, or indication in any way, that the drivers who were discharged on November 14 1941, had joined Teamsters Local 440, or any other union, at the time of their discharge; and knew nothing thereof until after their discharge, and at the meeting of November 14, which was held after their discharge, and at which Mr. Brandt and Mr. Thompson attended.

19. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph VI of said consolidated complaint, or any of them.

[934]

20. That the Board has failed by its evidence to substantiate or prove a refusal of the respondent to reinstate employees discharged on November 14th, 1941, mentioned in paragraph VI of said complaint, the evidence in this respect affirmatively showing that several of said truckdrivers have been offered re-employment, and some have accepted the same, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent; and I might add to my 19th reason, the statement that the evidence adduced in connection—by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

21. That the Board has failed by its evidence to substantiate or prove the allegations of Paragraph VII of said consolidated complaint, and that any proof adduced by the Board in connection there-

with does not substantiate, prove or constitute an unfair labor practice by respondent.

22. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph VIII of said consolidated complaint, or any part thereof, and that the proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

23. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph IX of said consolidated complaint or any part thereof. That the evidence of the [935] Board in this respect affirmatively shows that so far as respondent is concerned, Teamsters Local 440 or Teamsters Local 983 have wholly failed to furnish respondent during any of the times mentioned in said consolidated complaint, any evidence of its right to exclusive representation of the employees of the respondent referred to in paragraph 9 of said consolidated complaint, and that said testimony further affirmatively shows that respondent affirmatively offered to bargain with said Local 440 upon the furnishing of such proof, and that said Local 440 has never at any of the times mentioned in said consolidated complaint tendered any proof or further requested any bargaining, and that the proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

24. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph

X, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

25. That the Board has failed by its evidence to substantiate or prove that either on November 14, 1941 or at any time has respondent refused to bargain collectively with Teamsters Local 440, or Teamsters Local 983, or any other union, with respect to rates of pay or wages or hours of employment or other conditions of employment, or at all, for the unit described in paragraph [936] IX of said complaint, or any other unit, or at all, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

26. That the Board has failed in its evidence to substantiate or prove the allegations contained in sub-division 2 of paragraph X, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by the respondent.

27. That the Board has failed in its evidence to substantiate or prove the allegations contained in subdivision 3 of paragraph X, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

28. That the Board has failed in its evidence to substantiate or prove the allegations contained in subdivision 4 of said paragraph X, and that any proof adduced by the Board in connection therewith

does not substantiate, prove or constitute an unfair labor practice by respondent.

29. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph XI of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

[937]

30. That the Board has failed by its evidence to substantiate or prove the allegation of subdivision 1 of paragraph XI of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

31. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 2 of paragraph XI of said consolidated complaint or any of them and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

32. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 3 of paragraph XI of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

33. That the Board has failed by its evidence to substantiate or prove the allegations of para-

graph XII of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

34. That the Board has failed by its evidence to substantiate [938] or prove the allegations of sub-division 1 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

Trial Examiner Riemer: In connection with No. 32, do you seriously question that this meeting of the Association was held on company property?

Mr. Moyle: We claim that does not constitute an unfair labor practice under the circumstances.

(Continuing with motion.)

No. 35. That the Board has failed by its evidence to substantiate or prove the allegations of sub-division 2 of Paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

No. 36. That the Board has failed by its evidence to substantiate or prove the allegations of sub-division 3 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

No. 37. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 4 of [939] paragraph 12 of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

38. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 5 of paragraph 12 of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

39. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 6 of paragraph XII, of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

That it affirmatively appears from the evidence of the Board that the discount on gasoline and other products purchased from the Covey Gas & Oil Company of Idaho was given to all employees of respondent, regardless of their membership in the said Employees' Association.

40. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 7 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does

not substantiate, prove or constitute an unfair labor practice by [940] respondent.

41. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 8 of paragraph XII of said consolidated complaint or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

42. That the Board has failed by its evidence to substantiate or prove the allegations of subdivision 9 of paragraph XII of said consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

43. That the Board has failed by its evidence to substantiate the allegations of paragraph 13 of the consolidated complaint herein, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

44. That the Board has failed by its evidence to substantiate or prove that by any act or acts of the respondent it has interfered with, restrained or coerced, or is now interfering with, restraining or coercing any of its employees in the exercise of rights guaranteed in Section 7 of the National Labor Relations Act, or that respondent has engaged in any unfair labor practice or practices, or is now engaging in any [941] unfair labor prac-

tices within the meaning of Section 8, subdivision (1) of the Act, or at all.

45. That the Board has failed by its evidence to substantiate or prove the allegations of paragraph 14 of the consolidated complaint herein, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

46. That the Board has failed by its evidence to substantiate or prove that respondent, by the discharge of employees, and particularly those named in paragraphs 6 and 7 of the Consolidated Complaint herein, or by its refusal to reinstate discharged employees, particularly those named in paragraphs VI and VII of the consolidated complaint, or any of them, has discouraged, or is now discouraging membership of its employees or any of them in Teamsters Local 440 or Teamsters Local 983, or Machinists Local 198, or, in fact, any other labor organization or any self organization or other organization permitted by Section 7 of said Act, or that respondent has engaged, or is now engaging in any unfair labor practice within the meaning of Section 8, subdivision 3 of the Act, or at all; that on the contrary, the evidence of the Board affirmatively shows that respondent endeavored to re-hire several of its said discharged employees and particularly those named in paragraph VI and VII of said consolidated complaint, and did re-hire some of said discharged employees,

[942] while others of said employees refused said employment.

47. That the Board has failed by its evidence to substantiate or prove any unfair labor practice engaged in by respondent.

48. That the Board has failed *to* its evidence to substantiate or prove the allegations of paragraph XV of the consolidated complaint, or any of them, and that any proof adduced by the Board in connection therewith does not substantiate, prove or constitute an unfair labor practice by respondent.

49. That the Board has failed by its evidence to substantiate or prove that the respondent on any occasion or at any time, refused to bargain collectively with Teamsters' Local 440 or 983, as alleged in paragraphs VII, IX, and X of said consolidated complaint or otherwise, or at all, but on the contrary, the evidence of the Board affirmatively shows that respondent was willing to bargaining collectively with Teamsters Local 440 and offered so to do upon appropriate proof of its right of representation of respondent's employees or any part thereof.

50. That the Board has failed by its evidence to prove the allegations of paragraph XVII, or any of them, and that any proof adduced by the Board in connection therewith, does not substantiate, prove or constitute an unfair labor practice by respondent.

51. That the Board has failed by its evidence to substantiate or prove any activity of the re-

spondent, either as [943] alleged in paragraphs V to XVI, inclusive, of said consolidated complaint, or at all, occurring in connection with the operations of the respondent as described in paragraphs I, II and III of said consolidated complaint, or in connection with anything else, that have led or have tended in any way to lead to labor disputes, burdening or obstructing interstate commerce or the free flow thereof or at all contrary to the National Labor Relations Act, or at all.

52. That the Board has failed by its evidence to substantiate or prove allegations contained in paragraph XVIII of said complaint, or at all.

53. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of Section 8, subdivision 1 of the Act.

54. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of subdivision 2, Section 8 of the Act.

55. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor practice affecting commerce within the meaning of subdivision 3, Section 8 of the Act.

56. That the Board has failed by its evidence to substantiate or prove respondent guilty of any unfair labor [944] practice affecting commerce within the meaning of subdivision 5, Section 8 of the Act.

The respondent further moves to strike all of the testimony of Archibald and all the testimony pertaining to Archibald's union activities, upon the ground that there is no evidence, direct or inferential, that knowledge of his activity was ever acquired by the company, and that there is no evidence in the record from which knowledge on the part of the company could be inferred.

And the respondent moves at this time to dismiss the complaint filed herein so far as Bowman, Brower, and Henricksen are concerned, and requests that the motion be considered for each of these three as tho separately made, the evidence affirmatively showing that they never joined Local 440 and were not members of 440 at the time of their discharge.

Trial Examiner Riemer: What were those names,—Bowman, Brower and Henricksen?

Mr. Moyle: Yes, Bowman, Brower and Henricksen.

Trial Examiner Riemer: Bowman is not named in the complaint.

Mr. Moyle: Wait a minute. I may have the wrong name there. It seems to me that there were three of them. That should be Douglas instead of Bowman.

Trial Examiner Riemer: Brower, Henricksen and Douglas.

Mr. Moyle: That is right. [945]

Trial Examiner Riemer: Does that complete your motion?

Mr. Moyle: Yes, Mr. Examiner.

Trial Examiner Riemer: The hearing will recess for five minutes. I will rule on your motion when we reconvene.

(Whereupon, at this time a short recess was taken, after which proceedings were resumed as follows:)

Trial Examiner Riemer: The hearing will be in order.

Mr. Moyle: Could we have the motion show the name of Ellingford, added to the last motion that I made? That is four instead of three.

Trial Examiner Riemer: Will you do that, Mr. Reporter, please?

Before I rule on your motion, Mr. Moyle, there is one or two questions that I want to ask.

Is the Association represented this morning? Is the Association present or represented in this court room this morning? Does it have any motion to make? [946]

Trial Examiner Riemer: The respondent's motion to dismiss the complaint and its subdivisions is denied without prejudice to a renewal of the motion at the conclusion of its case. [949]

Trial Examiner Riemer: The motion to strike Archibald's testimony is denied.

Mr. Moyle: And a motion to dismiss the complaint as to Douglas, Brower, Henricksen and Ellingford?

Trial Examiner Riemer: The motion is denied.

DECKER LITTLE,

was thereupon called as a witness by and on behalf of the Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: Decker Little.

Trial Examiner Riemer: And where do you live, sir?

The Witness: Salt Lake City.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your occupation?

A. I am branch manager of the Firemen's Insurance Company of [950] Newark, New Jersey, and of the Metropolitan Casualty Company of New York.

Q. With your office at what point?

A. Salt Lake City, 917 Continental National Bank Building.

Q. What is the extent of the branch of which you are manager? A. How do you mean?

Q. The territory.

A. Utah and Southern Idaho and Eastern Nevada.

Q. How long have you been engaged in that business? A. 15 years.

Q. As such manager, do you know of any policy that had heretofore been issued to the Idaho Refining Company with coverage on fleet equipment?

A. Other than ours?

(Testimony of Decker Little.)

Q. No, of your company. A. No.

Q. Do you know of policies having been issued by the companies you represent?

A. Yes, sir.

Q. Will you state those policies?

A. Well, we had one policy, which is fleet coverage, on all the automotive equipment of the Idaho Refining Company.

Trial Examiner Riemer: Mr. Witness, you will have to define "we".

A. "We", well, the Firemen's Insurance Company of Newark, New [951] Jersey and the Metropolitan Casualty Company of New York.

Trial Examiner Riemer: Go ahead. Will you read the last answer, Mr. Reporter?

(Answer read aloud by the reporter as hereinabove recorded.)

A. (Continuing) Issued under combination policy and known as policy FM-227.

Q. When was policy FM-227 issued?

A. I think August 22, 1941.

Q. How long did it remain in effect?

A. It remained in effect until November 17th, 1941.

Q. What became of it then?

A. It was cancelled by registered notice at the company's election.

Q. By whom was it cancelled? A. By me.

Q. Was there a telegram which preceded it?

A. Yes, sir.

(Testimony of Decker Little.)

Q. I hand you what has been produced in evidence as Board's Exhibit 22 and ask you if you have ever seen this telegram before?

A. Yes, sir; I dictated that telegram and sent it from Salt Lake City.

Q. To whom did you send it?

A. I sent it to the Idaho Refining Company.

Q. What was the purpose of that telegram?

[952]

A. To gave them notice that we were cancelling their policy due to the excessive loss ratio.

Q. You said that you were cancelling it at the company's election? A. Yes, sir.

Q. What company do you mean?

A. The Metropolitan Casualty Insurance Company of New York and the Firemen's Insurance Company of Newark, New Jersey.

Q. Do I understand that you meant that it was being cancelled by reason of the decision of the company to cancel it?

A. I act for the company in Salt Lake City and this territory. My decision is the company's decision.

Q. Was that decision then made prior to the time that you sent the telegram?

A. It was made the day before I was in Pocatello and notified the company that I was cancelling the policy off.

Q. Now, why was there a limitation as to the time of cancellation?

A. We wanted to give the Idaho Refining Com-

(Testimony of Decker Little.)

pany as much time as possible to replace its policy, as it is difficult after a company gets off a risk, to replace it without a thorough investigation.

Q. Now, what was done with the policy after its cancellation?

A. My recollection is that it was returned to our Salt Lake office. [953]

Trial Examiner Riemer: I am sorry, but I didn't hear the answer.

A. My recollection is that it was returned to our Salt Lake City office, and later sent to San Francisco, and I understand they destroy them there, so there is no chance of the policy being in force again.

Q. (Mr. Merrill, continuing): Then I understand the original policy FM-227 has been destroyed by the San Francisco office?

A. That is to the best of my knowledge.

Q. Any other policies, if any, outstanding, would be mere copies of the original?

A. That is right.

Q. Now, who was the agent of the companies you represent who issued the policy?

A. The Turner Insurance Agency, Pocatello, Idaho.

Q. And what representative of the Turner Insurance Agency handled that business, if you know?

A. Rube F. Turner.

Q. And where does he live?

A. Pocatello, Idaho.

(Testimony of Decker Little.)

Q. Is the Turner Insurance Agency an Idaho Company?

A. I understand it is a corporation of the State of Idaho.

Q. Having its office at what point?

A. In the Bannock Hotel Building, Pocatello, Idaho.

Q. Now, why was policy FM-227 cancelled?
[954]

A. The reason that it was cancelled was because of the frequency of collision claims and property damage claims, and I had been instructed to watch very closely, because we were afraid of a very serious personal injury case.

Q. What losses had occurred under the policy?

A. That I can't give you because I haven't the information here, but there was a frequency, just happening too often—that is all.

Q. Will you explain a little more fully what you mean by frequency and happening too often?

A. We issue our policies for a premium, and that premium charge is based on a 50 per cent. loss ratio, and 50 per cent. for operations. This had developed practically 50 per cent. of the 100 per cent. put away with which to pay the losses. If we operated on that policy any further, we would lose money over and above the amount, so it was embarrassing for me to continue on that policy.

Q. To what were the losses due?

A. That I can't say. The Idaho Refining Company owned the trucks and employed the drivers.

(Testimony of Decker Little.)

No doubt the drivers were licensed in the state of Idaho, but they controlled the trucks, and the trucks were very good trucks, and in good shape.

Q. You understood the trucks have been in good shape and in good condition?

A. Practically new cars. [955]

Q. Leading one to the conclusion that it was the drivers' fault?

A. That is all that I can figure, because the Idaho Refining Company did not control their own trucks—the drivers did.

Q. Now, what were the fundamentals of the policy, what deductibles, what coverage, what type of equipment and so forth, was covered?

A. Well, I can't be positive. There were passenger cars covered for fire, theft, actual value, comprehensive, \$50 deductible, and \$100,000 property damage, and \$100,000 public liability for one person or more than one person in any one accident. That applied to all trucks and trailers, and the collision deductible was either \$100 or \$150.

Q. For each truck? A. For each truck.

Q. Did that apply likewise to the other automobiles?

A. Every automobile owned by the Idaho Refining Company, the Idaho Gas & Oil Company, and the Covey Gas & Oil Company.

Q. You mean, if there was a truck and trailer, they would both be covered?

A. Yes, they would both be covered for actual value, for fire, theft, with collision deductible, and

(Testimony of Decker Little.)

personal injury \$100,000 and property damage \$100,000.

Q. What do you mean by "deductible"?

A. That would be collision. That is, the Idaho Refining [956] Company was to pay the first \$100 or \$150 of any loss, and the insurance company paid everything over and above that amount.

Q. Assuming there was a truck and trailer going along the highway, covered by this policy, and an accident occurred in which both the truck and trailer were damaged, would the deductible be \$100 or \$200?

A. It would apply to each unit, that would be true—we call them tractors and trailers,—it would apply to each unit. That would be \$200 deductible, \$100 each.

Q. Now, then, if the loss to the truck or damage to the car was under \$100, then there would be no payment made by the company? A. No, sir.

Q. I mean by the insurance company?

A. No payment made.

Q. And then that would apply likewise to the trailer?

A. Yes, that would apply to the trailer.

Q. In all instances then where the loss or the damage to the covered property was under \$100 on each item, that loss would be absorbed by the Refining Company? A. That is right. [957]

Q. What information had you received touching the losses, or the driving of the covered equipment, Mr. Little?

(Testimony of Decker Little.)

A. Well, now, we don't participate—what I mean by that, we don't have the loss records right in our office. We have independent adjusters, the Fire Insurance Companies Adjustment Bureau in Pocatello, Twin Falls, and Boise. They have been adjusting the losses. Some losses have been adjusted by the Nichols Adjustment Bureau. We receive information pertaining to those losses in most cases. When the report is sent to the Company, we receive a copy, and at the conclusion it says, "Driver's fault," or some statement to that effect, and in most cases there was included "Driver was at fault" in every one of the accidents where collision and property damage loss was paid. [958]

Q. Have you ever observed the driving of any Idaho Refining Company trucks covered by this policy, on the highway?

A. Yes, two occasions. I was up here in November,—

Q. What year? A. 1941.

Q. What part of November?

A. I would say that it was the first part. It was before,—it was either the 5th or 6th, and I was making a little investigation because I had been put on notice there was another big loss reported on November 24—October 24, 1941, by the vice-president of our company, and on that notice, I came up here to investigate the condition. I left Pocatello for Idaho Falls and at Tyhee, just north of Pocatello—

Q. On the highway?

(Testimony of Decker Little.)

A. On the highway—I passed by a gasoline truck, and that truck passed me at I would say, 60 or 65 miles an hour, and when I got to Blackfoot it was dumping gasoline in an Idaho Gas & Oil station. It seems to me that station is just north of Blackfoot.

Q. How fast were you driving at the time that truck passed you?

A. I never go over 55 miles an hour.

Q. And that truck passed you on the highway?

A. Passed me before we got to Fort Hall.

Q. With an Idaho Refining Company driver?

A. I don't know as to that. [959] The Idaho Gas & Oil station was being fueled with that truck.

Q. You mean that you don't know the driver?

A. I did not know the driver. The only thing, I assumed that truck was an Idaho Gas & Oil truck,—or an Idaho Refining truck, because certainly they wouldn't be dumping gas at an Idaho Gas & Oil station if they were not.

Q. Was it a transport truck?

A. It was a big tractor and trailer.

Q. What was the other incident which you mentioned?

A. Before the end of the week, I was also going to American Falls, and one of the trucks that came out of the Idaho Refining Company there at the railway tracks, stopped at the railway tracks, I could see it there, and it passed me before I got to the bridge, before we arrived at American Falls.

Q. And how fast were you traveling?

(Testimony of Decker Little.)

A. About 55,—between 50 and 55 miles an hour.

Q. How fast would that truck be traveling?

A. I would say close to 60 or 65 miles an hour.

Q. And what type of truck was it?

A. A tractor and trailer.

Q. Drawing a cargo?

A. I judge it was drawing a cargo, because it came out of the refinery, and it certainly wouldn't go in there to unload—it would go in there to load up. [960]

Q. Now, Mr. Little, you say the policy FM-227 was issued in August, 1941? A. Yes, sir.

Q. Was there a policy in your company upon this equipment prior to that date?

A. Yes, that was renewing another policy that was dated the same date in 1940, for one year.

Q. And what was that policy number?

A. That was FM-199.

Q. Policy FM-199 remained in effect from August, 1940 to August, 1941?

A. That is right.

Q. And then August, 1941—in August, 1941, there was a renewal of the policy, and that was the one that was cancelled? A. Yes, sir.

Q. Had you experienced any losses under FM-199? A. Very disastrous losses.

Q. Relate a little more in detail those losses?

A. I haven't the records, but I know that we paid 'way over 100 per cent. loss ratio on that policy during the year 1940, August, 1940 to August, 1941.

(Testimony of Decker Little.)

Trial Examiner Riemer: That was on Policy FM-199?

The Witness: Yes, sir.

Q. (Mr. Merrill, continuing): Had you had your technicians examine the equipment? [961]

A. No, we don't maintain a field service; we just go on the year that the truck was made.

Q. You had examined, however, the truck, the make of truck, the character of truck?

A. That information is given to us by the Idaho Refining Company, and that naturally has to be checked over the state for license numbers.

Q. That is always done?

A. That is always done.

Q. Now, if the loss ratio on your policy FM-199 was excessive, why was the policy renewed or re-written as FM-227?

A. That policy was renewed because we felt that the line would not continue to show a loss ratio. We have this condition happen, that one year we will have a bad loss ratio on a line; it doesn't take much of a loss or many losses to make 100 per cent. loss ratio; and then the next year it will not show up the same way, but on this, we were in on the Idaho Refining Company when they first started, and our loss ratio has been going on until we cancelled off, so we felt that the loss ratio was getting no better, and no chance of getting any better, so the only thing that I could do was to cancel off to save myself embarrassment with the company.

(Testimony of Decker Little.)

Q. Was there any dissatisfaction expressed to you by the company itself?

A. Yes, Mr. Frank E. Chadwick, vice-president at San Francisco [962] visited me here in June or July and instructed me not to renew this policy, that is, FM-199.

Q. July of what year? A. July of 1941.

Q. Yes. A. I called in Gilbert Sheets,—

Q. Who is he?

A. He is, I understand, president of the Idaho Refining Company,—or was at that time.

Q. Living where? A. At Salt Lake City.

Q. Continue.

A. And through our persuasions to Mr. Chadwick, we secured permission upon his taking the matter up with his superior, which is Fred E. Sullivan, their superintendent of the automobile department George W. Donlan, to consider the re-issue of that policy, under the circumstances that we mentioned to him, which was that we ought to show a profit on that line. We received the information granting us permission to issue this policy immediately upon his return to San Francisco. That policy was re-issued under Policy FM-227 in August.

Q. Were your expectations realized, or otherwise?

A. No. The few days that we had the policy in effect, we had experienced about four thousand dollars loss out of an \$8500 premium, and with a loss ratio like that within 2-1/2 [963] months, all

(Testimony of Decker Little.)

we could expect was maybe a 500 or 600 per cent. loss ratio, and maybe a tremendous personal injury, as we have high limits.

Q. Now, what if anything had you—strike that.

Had you ever expressed any protest or admonition touching the driving of these trucks?

A. Every time we had a loss—there was such a frequency of these losses, as I mentioned before,—it was taken up with R. F. Turner of the Turner Insurance Agency.

Q. At Pocatello?

A. At Pocatello, and also I would let Mr. Sheets know about it, because he was president of the company. It was done more as information to the company.

Q. Did you ever make any expression of what would happen if correction was not made?

A. No, we never have. Our attitude is this: the company knows their loss ratio. They receive the checks. Now, if they can't take care of that condition, remedy it in some way, we have no way of doing it, and we do not maintain a field force for that purpose.

Q. Of course, you knew that the policy would have to be cancelled if the loss ratio became worse, or even maintained itself under Policy FM-199?

A. I just couldn't continue on the risk under the conditions, because we had made arrangements with Mr. Chadwick—we felt [964] the policy was going to develop a further loss, and I just couldn't

(Testimony of Decker Little.)

continue on that risk under the existing conditions, and that is all.

Q. Did you pass that information on to Mr. Sheets and Mr. Turner?

A. I passed it on to Mr. Turner every time I saw him, and I am pretty positive that I mentioned it to Mr. Sheets,—I see Mr. Sheets practically every day in Salt Lake City, and no doubt took it up with him many times.

Mr. Merrill: You may cross examine,—just a moment, please. Just another question or two.

Q. (Mr. Merrill, continuing): Mr. Little, is there any difference in the computation on premiums on long and short hauls?

A. Yes, there is.

Q. Explain it, please.

A. Well, on all trucks that operate within a radius of 50 miles, they are given a local haul rate. The next rate is 50 miles to 150 miles, which is given an intermediate rate; anything over 300 miles is given classification of long haul. Those rates are sometimes as high as 8 or 9 times the local haul rate. It is graded according to territory.

Q. Well, did the long and short haul experience have anything to do with the cancellation of this policy?

A. Not a bit. We were experiencing losses all over the state. [965] We had one loss—may I mention this?

Q. Yes.

A. We had one loss where a man started out

(Testimony of Decker Little.)

from Twin Falls for Pocatello and ended up in Wells, Nevada, and had an accident there.

Q. Sort of a wrong-way Corrigan?

A. Yes, we paid a total loss on that cargo.

Q. Have you any idea why he ended up in Wells, Nevada?

A. We have no idea, except he might have been a little drunk, we don't know.

Trial Examiner Riemer: You are assuming that?

The Witness: We assumed that. We don't know.

Mr. Penfield: We move that that answer be stricken if he doesn't know.

Trial Examiner Riemer: No, let it stay in.

Mr. Merrill: You may cross examine.

Cross Examination

Q. (Mr. Penfield): Mr. Little, did these policies that you referred to cover equipment of the Idaho Gas & Oil Company and the Covey Gas & Oil Company as well as of the Idaho Refining Company?

A. Yes, we included all three of the companies together, because they were so closely interwoven.

Q. It covered all of the equipment of those three organizations?

A. Yes, of those three organizations. [966]

Q. Mr. Little, you have testified in connection with your decision to cancel this insurance policy that you concluded that the drivers were at fault?

A. Well, how could you come to anything else?

(Testimony of Decker Little.)

We were responsible in no way whatsoever for their discharge or their reorganization or anything. The thing is that the Idaho Refining Company are not driving the cars, they own them, but the individuals were driving the cars. Now, it could be nearsightedness, farsightedness, lack of rest,—something was wrong. That is our attitude. We cancelled the policy off. We can cancel at any time. We do that when the policy becomes unprofitable. We are handling everybody's money. We can't lose money on our policies; we have got to be in a profitable business, and when we continually lose money on one line, we have to get off of it.

Q. As a matter of fact, you didn't know whether the drivers [969] were careful or just had accidents?

A. I don't know anything about them. I have no way of contacting the men driving the trucks; you have one bunch today, and somebody else tomorrow.

Q. You didn't know whether or not a majority of them had or had not had an accident?

A. I don't know, except the ones whose names were listed. The only ones we knew were the ones where they had claims. [970]

Q. Well, you stated that you had been considering for some time the loss ratio of the Idaho Refining Company, and did you make any suggestion to them in regard to it? [972]

A. No, I didn't. I feel that isn't our job. We insure a policy, and we insure a company; we

(Testimony of Decker Little.)

guarantee to pay certain losses that happen. Now, it is up to them to keep the equipment in good shape and keep good drivers, and keep everything in orderly condition. That is not our job. The only thing was that on the 27th of October, I insisted that they do something; then another loss came along, and I cancelled off.

Q. You say on October 27th you insisted that they do something? A. Yes, sir.

Q. How did you communicate this?

A. By letter.

Q. And what did you tell them?

A. Well, to the best of my recollection—I haven't the letter here—was the fact that something would have to be done about the loss ratio, or some sort of a safety campaign or something had to be done, because we couldn't continue on under that condition. Now, I don't know what I wrote—I haven't it here.

Q. Did you ever receive a reply from the company?

A. Now, I didn't personally. We had at that time five young ladies in the office, and a special agent, and the special agent didn't. We have only two of the young ladies in the office now who were with us at that time, and neither one of those did. Now, whether one of the other young ladies received any reply, I don't know personally. I didn't receive a reply to that letter, as I am out of the office about 80 per cent. of [973] the time, so when I say that I didn't receive it, I mean

(Testimony of Decker Little.)

that I didn't receive it, but it could have been received in the office.

Q. It never came to your attention?

A. No, it never came to my attention. The young lady in the automobile department is now out of the office.

Q. Wouldn't it be called to your attention if it had been received? A. Not particularly.

Q. In any event, that had no bearing whatever upon your decision to cancel?

A. My decision to cancel this policy was when I was up in November, and there had been a report that looked like another big loss on November 4th, and I just felt that I was sick and tired of trying to continue this line in force, so I cancelled off, and I gave them every consideration possible to get a new policy. We usually give five days, and we gave them approximately ten days.

Q. Did you ever suggest to the company that they discharge the drivers, or get a new crew of drivers?

A. We wouldn't dare do that, to be frank with you. We don't feel that we have that authority. We feel that if the company can't take care of that matter itself, then the only thing for us to do is to get off the risk.

Q. Is your answer that you did not?

A. It certainly is. [974]

Trial Examiner Riemer: Mr. Merrill, and Mr. Moyle, have you had time to examine Board's proposed exhibit No. 26 for identification?

(Testimony of Decker Little.)

Mr. Moyle: Yes, Mr. Examiner; we have no objection to it except that it is immaterial.

Trial Examiner Riemer: May I see it, please?

(Mr. Moyle hands exhibit to Trial Examiner.)

Trial Examiner Riemer: The proposed exhibit may be admitted and marked in evidence as Board's Exhibit No. 26.

Will you supply a copy?

Mr. Penfield: Yes, I will.

(Whereupon the document heretofore marked as Board's Exhibit No. 26 for identification was received in evidence.)

(Testimony of Decker Little.)

BOARD'S EXHIBIT NO. 26

Loyalty Group

Letterhead of

FIREMEN'S

Insurance Company

of NEWARK,

New Jersey

Organized 1855

SALT LAKE CITY BRANCH OFFICE

917 Continental Bank Building

Telephone 4-6417

Salt Lake City, Utah

December 18, 1941

Mr. John P. Evans

P. O. Box 910

Pocatello, Idaho

Dear Mr. Evans:

I wish to acknowledge your letter of December 18th with reference to the cancellation of the Firemen's Insurance Company and the Commercial Casualty Insurance Company policy with the Idaho Refining Company.

To start with, this class of business is looked on by insurance companies as the most hazardous type existing, and we only take these lines where the agency involved warrants it and in this case, we accepted this business for our agent because his agency warranted this concession.

We have carried the Idaho Refining Company

(Testimony of Decker Little.)

ever since they started to do business, and every year we have had a very serious loss ratio. The last policy was issued in August and the frequency of claims alarmed our San Francisco Department and I was instructed not to renew the policy when it expired. However, I notified the Idaho Refining Company that they must do something to reduce these claims such as safety campaigns, determining whether or not the drivers were in physical condition to drive trucks, whether careful check was made on long distance driving and whether trucks were kept in first class condition. We do know that these trucks were practically all new ~~new~~, and were the finest that could be obtained.

While in Pocatello and Boise during the month of November, I investigated the conditions existing and due to the claims piling up, I telegraphed the Idaho Refining Company advising them that we were cancelling their policy and that cancellation was to take effect as of November 17th. This gave them approximately ten days in which to replace the policy. Our notice of cancellation was November 12th, and the first advice of our intention to cancel was November 8th. I want to clearly bring this out to you that we have never during the operation of the above mentioned company tried to dictate to our assured whom they should employ, whom they should discharge or in any way interfere with the operation of their organization. We have made recommendations to safeguard and benefit not only the assured but our-

(Testimony of Decker Little.)

selves such as safety campaigns to be operated directly by the assured and periodical examination of their drivers.

In cancelling the Idaho Refining Company's policy, we never requested the discharge of any drivers. Cancellation was purely due to the loss ratio and the possibility of the losses continuing.

I trust this letter clears up any misunderstanding that you might have to the effect that our companies were responsible in any way for your dismissal from the Idaho Refining Company.

Yours very truly,

DECKER LITTLE

Decker Little

District Manager

DL:MR:F-Com

(Board's Exhibit 27 for identification marked by reporter.)

Q. (Mr. Penfield, continuing): I show you Board's Exhibit No. 27 and ask you if this is a letter written to the other truckdriver who visited you?

A. Well, I don't know the fellows. That is my signature there, and it is an identical copy of the other letter, or should be, at least.

Mr. Penfield: I offer it in evidence as Board's Exhibit No. [979] 27.

A. It is an identical letter.

(Testimony of Decker Little.)

Mr. Moyle: What is the purpose of having two identical letters?

Mr. Penfield: It appears to be the same letter. I wanted to establish that two drivers came.

Trial Examiner Riemer: Who is that addressed to?

Mr. Penfield: That is addressed to Mr. P. P. Stanger.

Trial Examiner Riemer: Mr. Moyle, without waiving any objection on the ground of its relevancy, would you stipulate that is a copy of Board's Exhibit No. 26?

A. It is not a copy; it is an individual letter.

Mr. Moyle: It is an exact copy of Board's Exhibit No. 26?

The Witness: That is right.

Trial Examiner Riemer: A copy of Board's Exhibit 26?

Mr. Moyle: Yes, but addressed to P. P. Stanger.

Trial Examiner Riemer: Yes.

Mr. Moyle: Who was Exhibit No. 26 addressed to?

Trial Examiner Riemer: John Evans, and this letter is addressed to whom?

Mr. Penfield: To Mr. P. P. Stanger. Well, with that understanding, I will not offer it.

(Whereupon a document was marked as Board's Exhibit No. 28 for identification.)

Q. I show you Board's Exhibit No. 28 for identification and ask [980] you if you can tell us what this is?

(Testimony of Decker Little.)

A. It is an answer to Mr. Babcock's letter.

Q. I call your attention to this portion in which you state:

"A letter to the Idaho Refining Company October 27th with reference to the loss ratio was never answered by the Idaho Refining Company or any of its officers, nor any answer made by telephone from the Idaho Refining Company"——

A. That is the one that I referred to that I wrote to the Idaho Refining Company upon receipt of a letter from the vice-president telling me under no condition to renew the policy if another loss had occurred.

Q. I didn't ask the question on the basis of that.

Mr. Penfield: I move, Mr. Examiner, that the answer be stricken.

Trial Examiner Riemer: No, the motion to strike is denied. Put your question again, but if you quote from the letter, please talk slowly.

Q. I wish to ask you if that is a correct statement that no answer was made by the Idaho Refining Company or any of its officers by telephone or otherwise?

A. As I explained this morning, no answer was made to me. There is only two girls left in the office that we had in the employ of the company at that time, and neither one of those received an answer by telephone, telegraph or letter. [981] However, three have left our employment, and the one in the automobile department has left. One of those

(Testimony of Decker Little.)

might have received it, as I mentioned before, and it might not particularly come to my attention, because immediately after I cancelled the policy. However, I have nothing in the file.

Trial Examiner Riemer: You say that there is nothing in the file?

The Witness: There is nothing in the file to show that there was an answer received.

Trial Examiner Riemer: Is there anything in the office files?

The Witness: That is the office files—pardon me.

Mr. Penfield: And I will offer this as Board's Exhibit No. 28.

Mr. Moyle: I have no other objection to it, except that it is immaterial, and just repetition of what the witness has already testified to.

Trial Examiner Riemer: It may be admitted and marked in evidence as Board's Exhibit No. 28.

(Whereupon the document heretofore marked as Board's Exhibit No. 28 for identification was received in evidence.)

(Testimony of Decker Little.)

BOARD'S EXHIBIT NO. 28

Loyalty Group

Letterhead of

Firemen's Insurance Company of Newark,
New Jersey.

Organized 1855

SALT LAKE CITY BRANCH OFFICE

917 Continental Bank Building

Telephone 4-6417

Salt Lake City, Utah

April 13, 1942

Subject: Policy #FM-227-

Idaho Refining Company

Mr. Wm. A. Babcock, Jr., Attorney

Hotel Whitman

Pocatello, Idaho

Dear Mr. Babcock:

I wish to acknowledge your letter of April 11 with reference to our cancelling the Idaho Refining automobile policy No. FM-227, issued through the Turner Insurance Agency of Pocatello, Idaho.

The letter sent to the Idaho Refining Company October 27 with reference to their loss ratio was never answered by the Idaho Refining Company or any of its officers, nor was there an answer made by telephone from the Idaho Refining Company or any of its officers.

I do, however, see Mr. Gilbert Sheets, who is either President or has been President of the Idaho Refining Company, almost every day due to his

(Testimony of Decker Little.)

being one of our Salt Lake City agents, but the only matter taken up between Mr. Sheets and myself was in regard to the effective time of cancellation of the above captioned policy. The policy contract states cancellation shall be effective 12:01 o'clock A. M. and I extended this time to 12:00 Noon, as of November 17.

I telegraphed the Idaho Refining Company November 10, 1941 and quote telegram:

“Due to High Loss Ratio Experienced on Equipment Owned by Your Corporation for Past Few Years We Are Cancelling Off Policy FM 227 by Registered Cancellation Notice to Be Effective November 17, 1941, Noon, Standard Time. Please Make Other Arrangements for Insurance.”

Our regular cancellation notice was mailed to the Idaho Refining Company and all interested parties on the 12th day of November, 1941, giving the usual five days notice.

In answering the last paragraph of your letter, I wish to state that never once did I ever advise or recommend that the Idaho Refining Company discharge any of its drivers or reorganize its driving crew. This subject was never mentioned or discussed in any way, and had no bearing on the cancellation of the policy.

Very truly yours,

DECKER LITTLE

Decker Little, Dist. Mgr.

DL:M-F

(Testimony of Decker Little.)

Mr. Penfield: Without waiving your objection as to its materiality, can it be stipulated that Mr. Babcock, the person there referred to, is an attorney for the National Labor Relations Board?

[982]

Mr. Moyle: I will so stipulate.

Mr. Penfield: Working on this case.

Mr. Moyle: I will stipulate to that, also. [983]

Redirect Examination

Q. I believe that you discussed with the president of the Idaho Refining Company, Gilbert Sheets, the question of these increasing losses, a number of times?

A. Well, on various occasions no doubt it came up. In fact, I took him to meet with our two vice-presidents on various occasions with regard to continuing this line on, that is, the renewal of Policy FM-199, and then to continue on with Policy FM-227.

Q. Had you imparted information to Gilbert Sheets, the president of the Idaho Oil Company that the policy would be cancelled if these losses continued?

A. Well, I would have to impart that knowledge to him, telling him about these losses and about correcting them.

Q. He knew, as a matter of fact,—

A. He knew without any question that something had to be done.

Q. How frequently did you talk to Mr. Sheets about it?

(Testimony of Decker Little.)

A. Well, just about every time a loss occurred that I was [987] informed about.

Q. With reference to that letter which you said was written about October 27, 1941, did you discuss the contents of that also with Mr. Sheets?

A. I can't recall whether I did or not.

Q. I see. A. I sent that direct.

Q. You also, of course—did you also advise Mr. R. F. Turner, your agent at Pocatello, that the policy would be cancelled if the losses continued?

A. Mr. Turner was advised about this every time I made a trip up here. We discussed the loss ratio.

Q. And he was advised of it, was he?

A. Yes, sir.

Q. Of what?

A. That we wouldn't continue on the risk if the loss ratio continued. We couldn't help it. Remember this, he acted as our agent, and we never go over our agent's head, unless we have to, and when we do, we always advise him of what we have done, and in this case, I was in Mr. Turner's office when I made the decision.

Q. To cancel the policy?

A. To cancel the policy, and I wrote a letter to the San Francisco office, advising them of what I was doing.

Q. Was that what your San Francisco office wanted you to do, [988] if you know?

A. Well, the intimation was that we might not

(Testimony of Decker Little.)

continue on the risk or renew the policy, and the way the vice-president sent it to me was that if we had more losses, to get off of it. [989]

Redirect Examination

Q. (Mr. Merrill): What did your observation of the speed of the two trucks concerning which you have testified have to do with your determination to cancel the policy?

A. Well, when those two things happened, I just felt that that is what was causing the accidents. Whether they had governors on the trucks, I don't know, or whether they were working, but that absolutely made me decide, because we never have a chance of defense if a car is going like that at 60 miles an hour.

Mr. Merrill: That is all. [992]

R. F. TURNER

a witness called by and on behalf of Respondent, was duly sworn and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: R. F. Turner.

Trial Examiner Riemer: And where do you live, Mr. Turner?

The Witness: Pocatello, Idaho.

Trial Examiner Riemer: Thank you.

(Testimony of R. F. Turner.)

Direct Examination

Q. (Mr. Merrill): What is your business, Mr. Turner? A. Insurance, loans and real estate.

Trial Examiner Riemer: Oh, Mr. Turner, I can't hear you.

A. Insurance, loans and real estate.

Trial Examiner Riemer: Thank you.

Q. Are you connected with any incorporated company? A. Just the Turner Agency.

Q. And what office do you hold in that company?

A. I am the president and manager. [999]

Q. As such officer, do you take charge of the insurance matters conducted by the company?

A. Yes, sir.

Q. Now, are you acquainted with the Idaho Refining Company? A. Yes, sir.

Q. Do you know its property? A. Yes, sir.

Q. Are you acquainted with the trucks in a general way, with the trucks and transports and cars of the Idaho Refining Company?

A. I was about a year ago.

Q. What was the nature of that acquaintance?

A. We carried the insurance on them.

Q. In what company did you carry the insurance?

A. We carried the fire, theft and collision in the Firemen's Insurance Company of Newark, New Jersey, and the property damage and public liability in the Metropolitan Casualty Insurance Company of New York.

Q. Was the coverage under one policy or two policies, the various items?

(Testimony of R. F. Turner.)

Q. When was that coverage discontinued?

A. The cancellation notice was sent out November 10, 1941.

Q. Cancelling it as of what date?

A. It gives them five days, that is, the policy continued in force five days after November 10th, then the cancellation was effective. [1000]

Q. There has been some testimony here that the cancellation became effective November 17; what is the fact, if you know, with respect to that?

A. Well, I haven't any record of that. It was my understanding that the company granted an additional time for the Idaho Refining Company to place this insurance in some other company.

Q. Now, have I asked you what companies—I will withdraw the question,—I have.

What property was covered by the policy of which you speak?

A. Well, all of their automobiles and trucks.

Q. By trucks, you mean what?

A. I mean the trucks that transported—well, a truck is anything but a private passenger car. We had some private passenger cars, and the rest were all trucks.

Q. Did it cover trailers? A. Yes, sir.

Q. And transports? A. Yes, sir.

Q. And tanks that were drawn by trucks?

A. Yes, sir.

Q. Now, you spoke of property damage, was there any deductible features on property damage?

(Testimony of R. F. Turner.)

A. No, there is no deductible on property damage. It covered the full five thousand dollars on any one accident.

Q. That is, of either——[1001]

A. Of property damage, damage to other people's property.

Q. Other people's property, yes. Now, with respect to the property of the refining company, was there deductible features with respect to that?

A. Yes, on the private passenger cars we had \$50 deductible.

Trial Examiner Riemer: What was that?

The Witness: On private passenger cars we had \$50 deductible; on the trucks and trailers, we had \$100 deductible.

Q. Now, assume, Mr. Turner, that a truck was drawing behind it a trailer, and that there was an accident to both the truck and trailer in which each were injured, what would be the nature or the manner of computing the deductible part of the loss?

A. We have to figure the replacement cost of the truck or tractors and the replacement cost of the trailers. When that was arrived at, then we would take and deduct the \$100.

Q. Would the \$100 be deducted from the truck and \$100 from the trailer, or \$100 from the group?

A. No, ordinarily they were insured as one unit. I think that it is one coverage there, where we had the trailers insured, but ordinarily the trail-

(Testimony of R. F. Turner.)

ers hooked onto what is called the tractor or truck and that is considered one unit.

Trial Examiner Riemer: So there would be only \$100 deductible?

The Witness: Yes, only \$100 deductible.

Q. (Mr. Merrill, continuing): Are you sure of that, Mr. Turner? [1002]

Do you have in your possession anything from which you can refresh your recollection on that point?

A. Yes. I am mistaken on that.

Q. Yes. What is the fact?

A. Well, there is \$100 deducted on the truck, and there is various amounts deducted on the trailer.

Q. What are those various amounts?

A. Well, there is \$48, \$35, \$30,—wait a minute. It is \$100 deductible.

Q. On what?

A. On the truck. We will take, for instance: here is a 3000 gallon tank and a semi-trailer. That carries \$100 deductible. That is just one unit. And according to this way, so far as I can gather here, now, we insured the truck and then we insured the trailer, and there was \$100 deductible on each one of them.

Q. Yes.

A. Yes, I was thinking of another policy.

Q. You find that is the fact?

A. That is the fact.

(Testimony of R. F. Turner.)

Q. So, with this particular policy, there was \$100 deductible on the trailer and \$100 deductible on the truck? A. Yes.

Q. And if there should be a loss exceeding \$100 to each where the two are connected going along the road, there would be \$200 [1003] deductible? A. Yes, sir; if both were injured.

Q. And that would have to be—and the Refining Company would stand that \$200 loss?

A. Yes, sir.

Q. Yes. Now, Mr. Turner, what was the number of the policy that was covered that you say was cancelled? A. That was FM-227.

Q. When was it cancelled?

A. The cancellation notice was sent November 10th, and according to the notice, it should have been cancelled out on November 15th. As I stated, however, I understand they were granted additional time.

Q. Did you know anything about a telegram that was sent to the Idaho Refining Company touching the cancellation?

A. Yes, I did. I received a copy of it.

Q. I hand you what has been introduced in evidence as Board's Exhibit No. 22, and ask you if that is the telegram, a copy of which you received? A. Yes, that is it.

Q. I call your attention there to the fact that the cancellation is as of November 17th, 1941; is that right? A. That is correct.

Q. What were the—when was the decision made,

(Testimony of R. F. Turner.)

if you know, for the cancellation of the policy FM-227? [1004]

A. Well, the first notice that I had of it was just a correspondence and discussing the matter with Decker Little, but the first actual notice I got was when I got a copy of the cancellation.

Q. You know Decker Little? A. Yes, sir.

Q. And what relation does he have in the business?

A. He took over the office as general manager of the company for the District.

Q. Was he in your office shortly before or at the time the decision for the cancellation was made?

A. I wouldn't remember the exact date. Mr. Little is in our office twice a month, if not three times a month, right straight through.

Q. At the time that he was in your office on November 10, 1941, was there any decision arrived at between you and Mr. Little touching the cancellation of the policy?

A. I am not so positive as to the date, but there was a discussion between Mr. Little and myself, that they were going to cancel the policy, and that discussion we had several times during the year.

Q. Why was the decision made to cancel the policy? A. Because of the high loss ratio.

Q. Explain what you mean by high loss ratio.

A. The number of losses, and the amount of losses that we were paying out. It made [1005] it undesirable to continue on the risk.

Q. What was the character of the losses?

(Testimony of R. F. Turner.)

A. Mostly collision. As I recall, there was one public liability claim, and there was possibly three or four small property damage claims, but the big part was loss by collision.

Q. Do you know to what the losses were due?

A. The reports that I got from the adjusters were "negligence of drivers".

Q. Was that the fact in most cases?

A. Practically every case.

Q. Now, how were those losses adjusted and determined?

A. Some of them were handled through the Fire Insurance Adjusters Bureau and some through the Nichols Adjustment Bureau of Salt Lake.

Q. Where is the Fire Insurance Adjusters Bureau located?

A. They are located,—There is one in Pocatello, and the losses around Twin Falls went to Twin Falls, and those around Boise to the Boise office.

Q. Do you know of any of these losses yourself? Were they reported to you?

A. Practically all reported to me.

Q. Can you give us a statement of them?

A. I have the memonanda here.

Q. What is that, please?

A. That is just practically the date, showing the loss and whether property damage or collision, and ordinarily I think that [1006] I have got the name of the drivers.

Q. On your policy FM-227, what information do you have touching the losses?

(Testimony of R. F. Turner.)

A. The amount of the loss——

Q. The date, amount of loss and driver?

A. Yes.

Q. Will you give it to us, please?

A. Well, on October 22, 1941, there was property damage claimed; the driver was Crawshaw; the amount we paid was \$26.45. The statement was "admitted liability". In other words, the company admitted liability.

Q. That is the insurance company?

A. Yes. On November 5, 1941, we had a collision loss, Patterson was the driver; the amount paid was \$625. I have a notation "carelessness" after that loss.

On October 24, 1941, we had property damage claim, White was the driver. We paid \$215——

Q. Is that White or Whitesides?

A. I have got it here "White" is all the memoranda I have.

Q. I see.

A. Then on October 24, 1941, we have—this is the same loss, but that was collision, and what—in other words, we had a property damage claim and a collision claim under the same loss.

Q. Yes. [1007]

A. We paid \$249.04 under the collision, and on October 4, 1941 we had a property damage claim, having paid out \$90.35 on September 6th.

Trial Examiner Riemer: Who was the driver there? Do you have it?

(Testimony of R. F. Turner.)

The Witness: The driver—let's see—Zollmers, is the way I have it here. On September 6, 1941, we had a property damage claim, the name of the driver was Ellingford; we paid out \$112.50; on October 16, 1941, we had a property damage claim, Douglas was the driver; we paid out \$90.40.

On October 16, 1941, we had a collision loss,—this is the same loss again, both property damage and collision——

Q. Douglas was the driver?

A. Douglas was the driver. On the collision we paid \$1726.36. On September 12, 1941, we had a property damage claim, Whitesides is the driver. We paid \$50. And along with that loss, we had a collision loss, the same date, the same driver, and we paid out \$1044.10.

Q. And the cause?

A. Carelessness. In fact, all of these have the memoranda "Carelessness" after them.

On August 31, 1941, we had a property damage claim—that don't amount to anything. Conrad was the driver. We only paid out \$7.

On September 12, 1941, Whitesides was the driver, Collision [1008] loss, paid out \$1000 on that.

Mr. Penfield: What was that date?

A. September 12, 1941.

On October 24, 1941, we had a collision loss. I have White as the driver here on that one, \$315,—

Trial Examiner Riemer: What was that last one, please, Mr. Turner?

(Testimony of R. F. Turner.)

The Witness: The date was October 24, 1941, collision loss, White was the driver, and we paid out \$315.

Q. May that have been Whitesides, or do you know?

A. It might have been. I don't recall now.

Q. What memorandum do you have as to the cause?

A. I don't have any memorandum as to the cause.

Q. I see. Now that extended over a period, I believe, as I remember your testimony, of about two months?

A. September, October and in November.

Q. The 5th of November was the last?

A. Yes, sir.

Q. And how many accidents were there in that period of time?

A. There would be 11 accidents, although we had 13 claims there, you see, between the collision and the property damage.

Q. Now, wherever—I will withdraw the question. In each one of those instances,—

Trial Examiner Riemer: What figure did you give?

A. I gave you 13 losses with 11 accidents. [1009]
That is, 13 claims, with 11 losses.

Trial Examiner Riemer: That seems right.

Q. (Mr. Merrill, continuing): Now, Mr. Turner, in determining the advisability of continuing on with the policy, is it the amount of the losses or

(Testimony of R. F. Turner.)

the number of accidents that is most determinative?

A. The number of accidents has just as much to do with it as the amount of the losses.

Q. And the reason why?

A. Well, it costs just as much to adjust a \$50 claim as a \$1,000 claim, and when it goes back into the records, it takes just as much bookkeeping, just as much as for a \$1,000 claim. It just shows that if the losses continue, you are going to get some big losses.

Q. What in your experience as an insurance man is the likelihood of heavy losses where there are numerous small losses?

A. It is certain that you are going to get some heavy losses.

Q. Now, in every one of those losses which you have mentioned, it is a fact, is it not, that the refinery company absorbed at least \$100 on each one of those losses?

A. Each one of the collision losses, yes, sir.

Q. Of the collision losses? A. Yes, sir.

Trial Examiner Riemer: Except in the case of private cars where there is only \$50? [1010]

The Witness: Yes.

Q. (Mr. Merrill, continuing): Were there any private cars reported here?

A. As I remember it, we never had a loss under a private car with the exception of one broken windshield. I think that is all that we ever had.

Trial Examiner Riemer: At least one of the

(Testimony of R. F. Turner.)

figures you gave on the list involved a private car, did it not?

The Witness: No, I had no losses under any private cars due to collision or upsets.

Q. As a matter of fact, the losses were always trucks? A. Entirely with trucks.

Q. Now, Mr. Turner, how would those losses be ascertained and adjusted?

A. Well, we would refer them, as I say, to the Fire Insurance Companies Adjustment Bureau. Ordinarily I would refer all losses to the Pocatello office, and they would in turn assign them to Twin Falls and Boise, and they would go out and determine the amount of the loss.

Q. When did the policy which was cancelled take effect?

A. It was on August 22, I believe, 1941.

Q. Was there a policy written by you preceding that policy? A. Yes, sir.

Q. And what was the number of that policy?

A. I think that was FM-199, as I remember it. Yes, FM-199. [1011]

Q. How long was that in effect?

A. That was written August 22, 1940 and expired August 22, 1941, and then renewed.

Q. Were there losses under that policy?

A. Yes, sir.

Q. What were they, if you know?

A. I have got a record here of a part of them, at least. There are five losses here that I have a record here of.

(Testimony of R. F. Turner.)

Q. And who were the drivers and when did the loss occur?

A. Well, on December 12, 1940, there was a collision loss, Henricksen was the driver, and we paid out \$298.53. There must have been property damage and collision both for that loss.

Q. Yes.

A. Our collision loss was \$1250. On June 10, 1941,—

Trial Examiner Riemer: Excuse me. Will you repeat that again, please? What was your property damage?

The Witness: The property damage would be \$298.53, and the collision damage was \$1250.

On June 10, 1941, we had a collision loss, Pearson was the driver, we paid out \$299. On December 11, 1940, we had a property damage loss, Henricksen was the driver; we paid out \$250.

On May 15, 1941, we had a collision loss, it looks like "Cornia" was the driver. [1012]

Q. Yes.

A. We paid out \$2500 on December 11, 1940. We had a collision loss and a public liability claim at the same time,—

Q. What was that date, please?

A. December 11, 1940, Henricksen was the driver on that. We paid out two thousand—

Trial Examiner Riemer: That was on public liability?

The Witness: As I remember that—I remember the loss. It seems to me we just made a settlement

(Testimony of R. F. Turner.)

there, but I don't seem to have the amount of the collision claim on there, but I know that there was a collision claim on the truck, because I saw the truck.

Q. How many losses under that policy did you have? A. I have a record of five.

Q. Now, you made mention of the fact a few moments ago that these losses were so far as you have a record of them. Do you mean by that that there may have been other losses of which you have no record?

A. There might have been other losses.

Q. There has been testimony here in the case of losses by Stanley Merrill, driver. I didn't hear you read his name.

A. I don't seem to have his name.

Q. There would be other losses if he had losses, also?

A. Yes, for this reason: some of these losses were reported to Boise and they would send the claims direct to Salt Lake, and I [1013] would get no record of them.

Q. How would the losses usually be reported to you? A. Generally by telephone.

Q. Now, did you ever have occasion to comment upon the losses to any of the officers of the Idaho Refining Company?

A. Yes, sir; at various times.

Q. When did you commence doing that?

A. Just before the expiration of policy FM-199,

(Testimony of R. F. Turner.)

because that [1014] policy was coming up for renewal and I think that I was talking to Mr. Gilbert Moyle, and I think that Mr. Webb was in the office at that time.

Then I talked to Kermit Rice several times.

Q. What has been the information which you have given them?

A. I simply told them that if the losses continued, the company would undoubtedly cancel out. [1015]

Trial Examiner Riemer: Mr. Merrill, will you excuse me, but before we go on here, while the witness has the record before him, will you go back to your record of losses under Policy FM-227, Mr. Turner, and tell us again the second loss or that one occurring November 5, 1941?

The Witness: Patterson was the driver.

Trial Examiner Riemer: Do you have his first name? [1016]

The Witness: I haven't the first name of any of them.

Trial Examiner Riemer: And that was the collision, and the loss paid was \$625?

The Witness: \$625.

Trial Examiner Riemer: Do you know where it occurred?

The Witness: I haven't got the record on that.

Trial Examiner Riemer: All right. Thank you.

A. The Fire Insurance Adjustment Bureau adjusted that.

(Testimony of R. F. Turner.)

Trial Examiner Riemer: But the driver was Patterson?

The Witness: Patterson is the way I have it, yes, sir.

Trial Examiner Riemer: I am sorry to have interrupted, Mr. Merrill.

Mr. Merrill: That is all right. You may cross examine.

Cross Examination

By Mr. Penfield:

Q. Mr. Turner, do you know that there were a number of the drivers who had never had any accidents?

A. We didn't have any connection with the drivers, whatsoever.

Q. Did you check into that matter or make any investigation of it? A. No, sir.

Q. The only thing that you were concerned with was the total number of losses?

A. That is correct.

Q. It also didn't concern you whether these losses were on equipment that was owned by the Idaho Refining Company or the Covey Gas & Oil Company or the Idaho Gas & Oil Company, is that [1017] correct?

A. That is correct, because we had them all covered under one policy.

Q. It was the aggregate of losses for the whole thing that concerned you?

A. Yes, sir. I never checked into it to see whether some of these losses came under the Covey end of it or the other.

(Testimony of R. F. Turner.)

Q. Did you ever make any suggestion to any one connected with the company in regard to the discharge of drivers? A. No, sir.

Q. Have you any way of knowing from your notes whether or not these losses which you referred to were on trucks of the Idaho Refining Company or the Covey Gas & Oil Company or the Idaho Gas & Oil Company?

A. I wouldn't be able to state from this record here, no.

Q. I believe that you testified from your notes in regard to an accident involving Boyd Cornia. I understand you to say that that was collision damage?

A. I would guess it was collision damage. I haven't any memoranda upon it. It was a \$2500 loss, and was,—I don't recall but the one such claim.

Q. You don't recall but the one?

A. That is the only one I can recall at this time.

[1018]

Redirect Examination

By Mr. Merrill:

Q. Mr. Turner, you advised counsel who just asked you, that your information that the losses were due to carelessness of the driver came to you from the investigators? A. Yes, sir.

Q. As a matter of fact, the company acted upon that information, did it?

A. Yes, sir; we accepted those reports. [1020]

Q. You accepted those reports as true?

A. That is correct.

(Testimony of R. F. Turner.)

Q. The investigators—are the investigators employed by the company or not?

A. No, they are——

Trial Examiner Riemer: What company?

Mr. Merrill: I beg pardon. By the insurance company.

A. The adjusters are employed by the Fire Insurance Companies' Adjustment Bureau.

Q. And they are an independent concern?

A. Yes, sir.

Q. To whom do you refer the matter of losses and accept their reports? A. Yes, sir.

Q. In other words, they run an adjustment office and adjust for all companies,—adjust for other companies than yours? A. Yes, sir.

Q. I understood you to say that a large portion of this equipment covered by the policy was new equipment?

A. A great many of the trucks were new equipment, yes.

Q. And generally your information was that they were in good condition? A. Yes, sir.

Q. New and used?

A. New and used. [1021]

Recross Examination

By Mr. Penfield:

Q. As a matter of fact, Mr. Turner, the insurance company is not ordinarily concerned with the cause of an accident, whether due to the driver's carelessness or not, they have to pay anyway?

(Testimony of R. F. Turner.)

A. They have to pay.

Q. It is the number of losses——

A. The number of losses and the amount paid, both combined.

Q. Do you know how many trucks the company has?

A. I couldn't tell you now how many. I could tell how many they had when we first wrote the policy.

Q. Well, that is what I mean.

A. These have been changed from time to time. There were 55 items on the policy when we first wrote it.

Q. Is that the policy that was cancelled?

A. Yes, sir.

Trial Examiner Riemer: 55 items, that included trucks and trailers?

The Witness: Trucks and trailers and passenger cars. [1022]

H. F. BENSON

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: H. F. Benson.

Trial Examiner Riemer: Where do you live, please?

(Testimony of H. F. Benson.)

The Witness: Salt Lake City.

Trial Examiner Riemer: Thank you.

Direct Examination

By Mr. Moyle:

Q. What is your business, Mr. Benson?

A. I am in the insurance business. [1028]

Q. How long have you been employed in the insurance business or engaged in it?

A. I have engaged in it for about 25 years.

Q. And what is your present activity in reference to insurance?

A. I am a general agent. If I were in the grocery business, I would be called a wholesaler.

Q. And where is your business located?

A. My headquarters are in Salt Lake.

Q. And you cover what territory?

A. Utah and Southern Idaho and part of Nevada and part of Wyoming.

Q. And under what name do you operate?

A. Benson Corporation.

Q. And what position do you hold in that corporation? A. President and manager. [1029]

Q. Was the cancellation of the Idaho Refining Company's policy by the Firemen's Insurance Company of Newark, New Jersey called to your attention at any time in November of 1941?

A. Yes, sir; about that time. [1031]

Q. And by whom?

A. One of my agents in Idaho.

Q. What is his name?

A. Mr. Sweeney, at Idaho Falls.

(Testimony of H. F. Benson.)

Q. And what did he tell you?

A. He told me that the risk had been cancelled off by the Firemen's Insurance Company and the reason why, and he asked me if I would consider writing it providing the cause of the losses was removed—that wasn't the exact language I am giving you, since I don't recall exactly what was said.

Q. And what did you say to him?

A. I said "yes", if we could have reasonable assurance that the cause of the bad loss experience had been removed, we would be glad to consider it.

Q. What did you understand to be the cause?

A. I understood they had some reckless driving up here.

Q. Now, what, if anything further, did you do in reference to this matter?

A. I believe that I told Mr. Sweeney that I would like him to make a personal investigation. He had told me in the first place that the drivers who have had the accidents had been discharged, and I asked him if he knew that to be a fact. I believe that he called me on the phone about it the first time, and then I asked him if he knew that to be a fact, and he said that is what he understood, and I asked him if he would make a personal [1032] investigation and ascertain if it was a fact, and if it was a fact, we would be glad to submit a quotation, on the risk.

Subsequently, I think he called me back on the phone again and said that it was true, that the drivers who had been having the bad experiences

(Testimony of H. F. Benson.)

had been discharged, and that they had a new set of drivers.

Q. Now, can you fix the date of the first conversation with Mr. Sweeney, or any of these conversations that you had with him?

A. Well, only approximately. I can establish it within a matter of two or three days, I think.

Q. All right, if you will, please.

A. It would have been somewhere around the 20th of November, 1941, possibly a little bit earlier than that.

Q. And——

Trial Examiner Riemer: Excuse me, but will you fix the sequence of these conversations?

Q. What is that first conversation—when did Mr. Sweeney first call you?

A. It would have been somewhere approximately the 20th—I can't fix the date within three or four days, one way or the other.

Q. And until what date, if you can tell me, did your negotiations with Mr. Sweeney continue in reference to this matter?

A. We submitted a quotation dated November 24 on the risk. [1033]

Q. So that these various conversations that you had with Mr. Sweeney were according to your best recollection between the 20th and 24th?

A. Pardon me,—I will have to correct that. Here is a letter from Mr. Sweeney dated November 17th, so the conversation would have been prior to that time, probably be around somewhere between

(Testimony of H. F. Benson.)

the 13th and 15th,—around in there,—because this first letter is dated November 17th.

Q. So that somewhere between those dates, that is up to November 24th, these various conversations occurred? A. That would be right.

Q. And you say you did submit a proposition by which you would insure the Idaho Refining Company?

A. Yes, or rather, to put it more exactly, Mr. Sweeney submitted it on my behalf. He submitted it over his own signature, but we wrote the letter in our office for him to sign.

Q. Will you state now upon what, if any, representations of the Idaho Refining Company your proposal was based?

A. Well, I had known something of that risk for a number of years, and I had never heard anything particularly bad about the loss experience until about the last year prior to this period that we are talking about, and when a risk—that is almost an axiom in the insurance business, when a risk that has been good before suddenly goes sour, there is some definite [1034] reason for it, and in the course of my conversations with Sweeney, and my investigations, I got a very clear understanding that it was due to careless driving, and I naturally in submitting my quotation, I wanted to be very sure that those troubles had been removed, otherwise, we didn't want the risk at any price.

Q. I will ask you to state in that connection whether or not if the drivers involved had not been

(Testimony of H. F. Benson.)

discharged, would you have considered the writing of this insurance under any circumstances?

A. No, sir.

Q. You did not finally write the insurance?

A. No.

Q. And you have no interest in this case?

A. No, sir.

Q. And are not now, and never have been, interested in any insurance which this company carried?

A. No, sir.

Mr. Moyle: You may cross examine.

Cross Examination

Q. (Mr. Penfield) Mr. Benson, what if any, investigation does your company make of drivers prior to issuing a policy?

A. You mean in this specific case? Or ordinarily?

Q. I mean, what is your general practice?

A. Ordinarily, none at all. [1035]

Q. You don't make any investigation?

A. No, sir.

Q. In this particular case,—

A. Pardon me—let me say that at times, we do make an investigation of the loss record.

Q. You do make an investigation of the loss record?

A. Exactly; if it is bad, we inquire into the reasons for it.

Mr. Moyle: If I might interrupt you, Mr. Penfield, I had intended having a letter marked as an

(Testimony of H. F. Benson.)

exhibit and put in evidence by this witness, if I might.

Trial Examiner Riemer: May he interrupt your examination, Mr. Penfield, and do that?

Mr. Penfield: Yes.

Trial Examiner Riemer: Where is the letter?

Mr. Moyle: I have the letter right here, the copy that we received.

(Whereupon the document hereinabove referred to was marked as Respondent's Exhibit 5 for identification.)

Q. (Mr. Moyle) I show you what has been marked as Respondent's Exhibit No. 5 for identification, and ask you if that is the letter to which you referred as having been sent?

A. That is the letter written in my office for the signature of my Idaho Falls Agent.

Q. Did you dictate that letter? [1036]

A. I did.

Q. Does it bear the signature of the Idaho Falls Agent? A. It does.

Mr. Moyle: We offer in evidence Respondent's Exhibit 5 for identification.

If it is accepted or received in evidence, we ask leave to have it copied and two copies substituted and the original withdrawn.

Trial Examiner Riemer: You may do that.

Mr. Penfield: We have no objection.

Trial Examiner Riemer: May I see it, please?

(Mr. Penfield hands letter to Trial Examiner Riemer)

(Testimony of H. F. Benson.)

Trial Examiner Riemer: It may be admitted and marked in evidence as Respondent's Exhibit No. 5.

(Whereupon the document heretofore marked as Respondent's Exhibit No. 5 for identification, was received in evidence.)

RESPONDENT'S EXHIBIT No. 5

(Cut)—United Pacific

United Pacific

Insurance Company

Exchange Building

Seattle, Washington

Associated Agencies Inc

General Agencies

308 McCornick Building

Salt Lake City

November 24, 1941

Idaho Refining Company

Pocatello, Idaho

Gentlemen:

Please consider my quotation for writing automobile insurance on the fleet of vehicles owned by the Idaho Refining Company, the Idaho Gas & Oil Company and the Covey Gas & Oil Company as follows:

1. Bodily Injury with \$100,000/
\$100,000 limits and Property Dam-
age with \$5000 limit—total annual
premium \$3393.10
2. Fire Insurance (Comprehensive
Fire and Theft on passenger cars

(Testimony of H. F. Benson.)

only) according to your valuations
and Collision insurance on de-
ductible basis exactly as carried in
your previous policy—total annual
premium 5772.23

Total Quotation \$9165.33

The Bodily Injury and Property Damage as quoted above will be written in the United Pacific Insurance Company, which is the largest single carrier of this class of insurance in the intermountain country. This company carries insurance for the State of Utah, State of Idaho, Salt Lake City, Ogden City, Idaho Falls, Pocatello, Burley and many other municipalities. It provides adequate claim service with its own claims adjustor in Salt Lake City.

The Fire, Theft and Collision will be written in another company but arrangements will be made for the same adjustor to handle all claims.

These quotations are submitted with the understanding that you have discharged all drivers in your employ prior to October 17, 1941 and that none of these old drivers will be rehired.

Please accept my thanks in advance for any consideration you may be able to give my quotation.

Yours truly,

DAVID M. SWEENEY,

David M. Sweeney

Agent

Mr. Moyle: Thank you very much. That is all.

Q. (Mr. Penfield) (To the reporter) Will you

(Testimony of H. F. Benson.)

read me the last question and answer, Mr. Reporter?

(Whereupon the last question and answer were read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Penfield, continuing) And when you inquire into the reason, do you inquire into the individual drivers?

A. Not unless we ascertain from our investigation that some one or more particular drivers have been responsible for the bad [1037] loss ratio. If we found that condition to be true, we would either refuse to write the business at all, or we would demand that the drivers be removed.

Q. That would be just with respect to particular drivers, is that correct?

A. Certainly. I don't recall that I ever had such a situation arise where more than one driver was involved, before.

Q. In this particular case, you stated that you had heard that the Idaho Refining Company had a bad record from gossip that went around the insurance companies, is that correct?

A. Yes, sir.

Q. But your advice that the policy that the Firemen's Insurance Company of Newark, New Jersey had been carrying had been cancelled, that was received from Mr. Sweeney?

A. Yes, that was the first knowledge that I had that they had cancelled off.

(Testimony of H. F. Benson.)

Q. And at this time, Mr. Sweeney told you that the drivers had been discharged? A. Yes.

Q. And your only knowledge about the drivers had come from gossip?

A. No, my knowledge about the drivers came from Mr. Sweeney.

Q. Perhaps you misunderstood me. I mean with regard to whether the drivers were careless or not?

A. I think that it came from Mr. Sweeney, so far as I can [1038] recall. I don't know that I had ever heard any reason for the bad experience through the gossip that I heard; in other words, I wasn't much interested in it.

It was rumored around that somebody was having a bad loss experience on it, but I didn't inquire into it until it came up to me to make a quotation on it.

Q. So Mr. Sweeney told you that the drivers had been discharged and they had employed all new drivers? A. Yes, sir.

Q. He didn't tell you anything about the individual accident record of any driver, did he?

A. No, sir.

Q. You didn't know whether some of them had never had an accident, or whether they had had an accident? A. No, sir.

Q. And that was after the insurance had been cancelled, was it not?

A. I believe that is right.

Q. And he told you that the drivers had been discharged?

(Testimony of H. F. Benson.)

A. If I remember correctly, I believe he told me that the company had served cancellation notice, but had agreed to give the Idaho Refining Company some extra time to place their insurance elsewhere.

I think that that was the situation.

Q. Now, you stated that it was upon the basis of this [1039] representation that the drivers had been discharged that you were led to make this offer, is that correct?

A. That is true, yes, sir.

Q. Did you know anything about the new driving crew? A. No.

Q. Did you know anything about the care with which they were to be chosen, their qualifications?

A. No,—well, pardon me, let me correct that. I was told that the new drivers were going to be given a course of training of some sort, some special training course.

Q. Who told you that?

A. In the handling of these transports, these big units.

Q. Who told you that?

A. Mr. Sweeney told me that.

Q. And it was partly on that representation that you made this offer, was it not?

A. That had a bearing, yes. It led me to suppose that probably the new drivers would at least be competent.

Q. But other than that, you didn't know anything about the new drivers? A. No, sir.

Q. And you didn't know for sure whether—

(Testimony of H. F. Benson.)

other than what Mr. Sweeney told you—whether all the old drivers had been careless or any of them had been careless?

A. I didn't know. Let me interpolate something right there, if [1040] you don't mind. Supervising general agents of a company, and managers, necessarily have to place a great deal of reliance on information given them by their field men, by their agents; when an agent tells you that such and such a condition exists, you depend on it; we feel that it is correct, and an agent is very careful about what he tells, therefore, when Mr. Sweeney gave me the information, I assumed that he knew what he was talking about, although I did ask him to investigate and be sure that it was true.

Q. But you were the one who was responsible for making the offer set forth in the letter which is Respondent's Exhibit No. 5? A. Yes, sir.

Q. And that was prepared under your direction?

A. That is right. [1041]

WALTER W. WATKINS.

was thereupon called as a witness by and on behalf of Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: My name is Walter W. Watkins.

(Testimony of Walter W. Watkins.)

Trial Examiner Riemer: And where do you live, Mr. Watkins?

The Witness: I live in Salt Lake City, Utah.

Trial Examiner Riemer: Thank you, Mr. Watkins.

Direct Examination

Q. (Mr. Moyle) What is your business, Mr. Watkins?

A. I am in the general insurance business.

Q. And under what name do you do business?

A. We operate as the Selbach Insurance Agency.

Q. That is an agency located in Salt Lake City?

A. That is correct.

Q. And has been such for how long?

A. Since 1912.

Q. Continuously? A. Yes, sir.

Q. How long have you been associated with this agency?

A. I have been with the Selbach Insurance Agency since 1926.

Q. And what position do you now hold with that agency?

A. I am one of the two partners of the Selbach Insurance [1042] Agency.

Q. When did you become such?

A. The Selbach Insurance Agency was a corporation until some five years ago, and at that time, I was secretary. We formed a partnership about five years ago.

Q. And you have been a partner continuously since then? A. That is right.

(Testimony of Walter W. Watkins.)

Q. And you are now? A. Yes, sir.

Q. Calling your attention to November of 1941, did you have occasion to look into the insurance matters of the Idaho Refining Company?

A. I did.

Q. And what was that occasion?

A. On November 15, Saturday, Mr. James D. Moyle called me and explained to me that the Idaho Refining Company insurance was being, or had been, cancelled, and asked me if I could do anything in order to provide any insurance.

Q. What did you do?

Mr. Penfield: Council, I believe he stated James D. Moyle.

Q. This James D. Moyle is a friend of yours?

A. Yes, sir.

Q. Of Salt Lake City?

A. Yes, sir.

Q. He went to school with you? [1043]

A. Yes, sir.

Q. Belonged to the same fraternity?

A. Belonged to the same fraternity.

Q. And he is a brother of Henry D. and Gilbert D. Moyle? A. I believe so.

Mr. Penfield: Thank you, counsel.

Q. Now, so far as you know, does he have anything to do with the Idaho Refining Company?

A. No, I believe not.

Q. You understood that what he told you, he told you as a friend? A. That is right.

Q. What did you then do, if anything?

(Testimony of Walter W. Watkins.)

A. He asked me if I wouldn't call his brother Gilbert at Pocatello and see if I couldn't do something to provide insurance for them. He said their insurance was being cancelled, that is, the Idaho Refining Company's insurance was being cancelled, and they didn't want to operate without insurance, and he asked me if I couldn't do something towards providing that insurance.

Q. And what, if anything, did you do?

A. I immediately called Mr. Gilbert Moyle at Pocatello.

Q. What did you say to him?

A. I explained to him that Mr. James D. Moyle had called me and advised me of this cancellation, and asked him if I couldn't be [1044] of some service to him?

Q. What did he say?

A. He said he would appreciate it very much if I would. I was quite surprised. That is the first time I ever heard of anybody asking an agent to try to provide insurance; it is usually the other way around.

Q. What did you do then, if anything?

A. I asked him, of course, why the insurance was being cancelled.

Q. What did he tell you?

A. Bad loss ratio, and I asked him if he would send me a list of the cars contained in the fleet schedule so I could submit it to my company for their entertainment.

(Testimony of Walter W. Watkins.)

Q. What else, if anything, did he tell you about the cause of the cancellation?

A. He said that it was the frequency of the accidents.

Q. And did you know anything about this line, independently of what Mr. Moyle told you?

A. Oh, just as Mr. Benson said, it is just hearsay on the street. I had heard of it. I had knowledge of the line. I didn't know the experience; I knew who carried the line, and I had heard that it was not too desirable.

Q. Did Mr. Moyle tell you anything about—or did you discuss with him about what the future situation would be?

A. Yes, sir. [1045]

Q. What was said?

A. Mr. Gilbert Moyle explained to me that he was—or had discharged the drivers of the transport units, and that he was going to install a safety campaign, and would pay a bonus to drivers who did not have accidents, in an effort to cut down on the loss frequency.

Q. Now, what did you do—or do you remember any further discussion with Gilbert Moyle, anything further he told you?

A. I don't recall offhand. I asked him if he would send me a list of cars. It was on a Saturday, and on Sunday I went to our post office box, and there was the old policy, that is, the policy which was to be cancelled of this Metropolitan Casualty Insurance Company of New York.

(Testimony of Walter W. Watkins.)

Q. Do you remember whether that was Policy No. FM-227?

A. I wouldn't remember that. It looked to me like the original policy. It was signed by the Turner Agency, and had all the cars, that is, it had a complete list of all of the units on the policy.

Q. And in what company was it written?

A. Loss combination in the Firemen's Insurance Company of Newark, New Jersey and the Metropolitan Casualty Insurance Company of New York.

Q. All right. After you received this policy, what did you do?

Trial Examiner Riemer: Excuse me for interrupting. You got [1046] that on Sunday, November the 16th?

A. That is right, Sunday, November 16th.

Q. Then what did you do, Mr. Watkins?

A. I took the policy home and looked it over, studied it over for a few hours, and then the next morning I took the matter of rewriting it up with the Kolob Corporation of Salt Lake City. They are general insurance agents in Salt Lake City.

Q. What representations, if any, did you make to them, concerning the situation?

A. I told Mr. Salisbury,—he is the manager of the Kolob Corporation—as an inducement to—I explained to him that the Idaho Refining Company was getting new drivers, and intended to install this safety campaign wherein they would pay bonus rewards to drivers who were not involved in acci-

(Testimony of Walter W. Watkins.)

dents, and Mr. Salisbury took the matter up with the Denver office. He didn't have the loss experience, if I remember correctly. Mr. Gilbert Moyle gave me, as nearly as he could, the loss experience, and it was very heavy.

Q. Now, after that, you—did Mr. Salisbury write the policy, or did he authorize you to write it?

A. No, Mr. Salisbury then—he had some other information as to the loss experience that he had gotten elsewhere and he—I don't know where *the* got the information, but he knew something of the line, knew it was a hot line, as Mr. Benson calls it, so Mr. Salisbury then called the branch office of the company at [1047] Denver, and asked if we couldn't put it under binder for a few days, that the insurance was out on November 17th,—this was November 17th when I talked with Mr. Salisbury, and we got authority from the Denver branch office to issue a ten-day binder on this risk.

Q. That was issued when, Mr. Watkins?

A. That was issued on Monday afternoon, November 17th.

Q. And what did you do with that binder?

A. That binder was taken down to you in the Boston Building—the Newhouse Building.

Q. And you further investigated the risk and the company and so forth during this ten-day period?

A. No, sir; we didn't.

Q. That is, I mean either you or Mr. Salisbury?

A. Our investigation was made sometime in January.

(Testimony of Walter W. Watkins.)

Q. Well, was there more than one ten-day binder,—strike that, Mr. Reporter. When did you actually issue and deliver the policy?

A. The business was given to our office on November 24, and we,—in having to secure and write this policy, we were required to give another ten-day binder effective November 27th. There was a ten-day binder from November 17th, and we issued a second ten-day binder effective November 27th.

Q. When was the policy finally issued?

A. The policy was finally issued November 28th.

[1048]

Q. And when was it delivered to the Refining Company?

A. The policy was finally sent to the Idaho Refining Company December 2nd.

Q. And that policy was dated back to the 17th of November to cover the period which you had already covered by binder? A. That is right.

Q. You heard Mr. Salisbury discuss this matter over the telephone with Denver?

A. I was in his office at the time he discussed it.

Q. And what representations did he make to Denver?

A. He explained to Mr. Lou Gerding, the branch manager, that this line was being cancelled by the Metropolitan Casualty Insurance Company. He explained to him that it was because of the high loss ratio and frequency of accidents, that we had been assured that there was to be a new set of drivers on these transport units. I think that there were

(Testimony of Walter W. Watkins.)

—if I remember right, I think Mr. Moyle told me there were some 17, in that neighborhood, 17 or 18, I believe he said, and Gerding, if I remember correctly, called us back and said it was all right to issue a binder for ten days.

Then we figured the premium on the risk and submitted it to you for approval, and it was given to us on November 24th.

Mr. Moyle: You may cross examine. [1049]

Cross Examination

Q. Did you know anything about the accident record of any of the drivers of the Idaho Refining Company?

A. The accident record of the individual drivers?

Q. Yes. A. I did not.

Q. You never made any investigation into that, did you? A. No, sir.

Q. So, for all you know, there might have been only a few of them who were involved in the accidents?

A. It could be that one of them had all of the accidents.

Q. So far as you know?

A. That is right.

Q. The only thing that you would know about it was the loss ratio, is that correct?

A. I didn't know the ratio; I knew of the frequency; I knew that there were many accidents.

Q. As a matter of fact, you didn't know whether these accidents involved the tank trucks driven by

(Testimony of Walter W. Watkins.)

the Idaho Refining Company employees, or whether they involved the other trucks owned by the Idaho Gas & Oil Company and the Covey Gas & Oil Company?

A. It was my understanding that the losses were on the tankers, the units hauling to the various—from the refinery to the various service stations.

Q. Did you ever make any examination of what the losses had [1051] been and what were the circumstances surrounding any of them after the policy was issued? A. We did.

Q. But not before the policy was issued?

A. No, sir.

Q. As a matter of fact, all that you knew about the records of the old drivers of the company was secured from the officials of the Idaho Refining Company, was it not?

A. That is all that I knew of it. Mr. Salisbury, as I explained, had some further information.

Q. In so far as you were concerned, that is all that you knew, and you took that at face value? Is that correct? A. Yes, sir.

Q. You stated that it was represented to you that the company was planning to put in a safety program and give bonuses and that sort of thing, do you know whether any steps were taken along those lines?

A. I understand that there were.

Q. Do you know whether they were taken—do you know? A. No, sir; I don't.

(Testimony of Walter W. Watkins.)

Q. You never made any investigation to see whether they were or not? A. No, sir.

Q. That was just on the representation from the company? A. That is right. [1052]

Q. Did you know anything about the company's policy with relation to the hiring of new drivers?

A. No, I didn't know anything about it.

Q. You didn't know whether they were going to be given tests — what sort of qualifications they would have to have?

A. Mr. Moyle explained to me that he was going to use more care in selecting new drivers, and that they were going to install this safety campaign. That was the reason for our entertaining the insurance.

Q. Although he said he was going to use more cars, you didn't know anything about the care with which the old drivers had been selected?

A. No. [1053]

H. McKAY ALLEN

was thereupon called as a witness by and on behalf of the Respondent, and being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: H. McKay Allen.

Trial Examiner Riemer: And where do you live, Mr. Allen?

(Testimony of H. McKay Allen.)

The Witness: In Pocatello.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your occupation or business, Mr. Allen? [1056]

A. Insurance adjuster.

Q. Connected with what company?

A. The Fire Insurance Companies Adjustment Bureau.

Q. Where is that business located?

A. The office that I am connected with is located in Pocatello, they are a national corporation.

Q. The Pocatello office is a branch of the national corporation? A. Right.

Q. What is the business of the company with which you are connected?

A. Investigating losses and settlement of claims for insurance companies.

Q. What position do you have in the Pocatello office? A. Local branch manager.

Q. And under you, are there adjusters?

A. Yes.

Q. What business do you have in the adjustment of losses,—let me withdraw that question. I understood you to say that you adjust losses that occur when property is insured?

A. Yes, sir.

Q. Do you confine all of your adjustments to one company, or do you adjust for various companies?

A. We adjust for numerous companies.

Q. And in the business of adjustment, has your

(Testimony of H. McKay Allen.)

company adjusted losses on trucks owned by the Idaho Refining Company? [1057]

A. Yes, sir.

Q. Do you know under what policies the adjustments have been made by your company?

A. I believe that there were several policies.

Q. Are you acquainted with Policy FM-227, issued by the Firemen's Insurance Company of Newark, New Jersey, and the Metropolitan Casualty Company of New York?

A. To the best of my recollection, I have seen that on the policy information pertaining to the claims of the Idaho Refining Company.

Q. Are you able to tell us what your records show with respect to losses under Policy FM-227?

A. I have here the cases that we have developed and built in our office surrounding the investigation and settlement of claims arising out of two policies, I believe the policies mentioned by you.

Q. Now, will you refer to the ones arising out of Policy FM-227, and advise what your records show with respect to losses, and if possible, give the date of the loss, the name of the driver, the amount of the loss, and the reason for the loss?

A. Unfortunately, I didn't segregate these claims as between the two policies, but I can go through them—there is no necessity of putting them in chronological order,—if I can go through and get all of the losses pertaining to Policy FM-227, is that sufficient? [1058]

Trial Examiner Riemer: Yes.

(Testimony of H. McKay Allen.)

Q. I assume it would be.

A. The first claim that I have is one in which the accident occurred on August 31, 1941, under Policy No. FM-227; Wayne Conrad was the driver, and a brief idea of the nature of the accident was that while Mr. Conrad was passing a car which was coming towards him in the opposite direction on a narrow road, he scraped the left rear fender of this car, doing \$7 worth of damage.

Trial Examiner Riemer: I think that it would be sufficient if you stated on the basis of your investigation it was your determination that the driver was negligent and responsible for the loss. Can you do it that way?

A. Our investigation is based on a matter of legal liability. I believe that I can cut down the comments.

Trial Examiner Riemer: Is that satisfactory, Mr. Merrill?

Mr. Merrill: Yes, it is.

A. On November 5th, 1941, Mr. Robert W. Patterson was driving an Idaho Refining Company truck, insured under Policy FM-227. The gentleman went to sleep and left the road. The insurance company paid \$625. That was apparently—I think the facts speak for themselves in that case.

Q. Your record shows that it was negligence on the part of the driver, does it not?

A. Yes, so far as our investigation is concerned, it was. [1059]

(Testimony of H. McKay Allen.)

On October 22, 1941, Mr. Charles Crawshaw backed into two parked vehicles to do damage that was settled in the amount of \$26.45. It was a case of error in judgment on the part of the driver, or he did not look behind him in backing up.

On October 4, 1941, Mr. Mervin Zollman, driving an Idaho Refining Company truck insured under Policy FM-227, struck a horse between Boise and Mountain Home. As to whether or not that was negligence on the part of the driver, it is a hard thing to say.

Trial Examiner Riemer: It might have been negligence on the part of the horse?

It occurred at night and resulted in a collision loss to the insurance company of \$90.35. Little investigation was made into the negligence in that case.

On October 16, 1941, Mr. Douglas was operating an Idaho Refining Unit on the streets of Weiser, Idaho, and from a brief investigation of the file which I have not seen today, it appears that he made a sharp turn at an intersection in Weiser, Idaho, stating that there was another car coming towards him which caused him to make the sharp turn with the end result, at any rate, he turned the tractor and tanker over, spilling the contents, striking a car that was parked on the street. There was a property damage claim settled in that case, apparently for the damage to the parked car in the amount of \$90.40. [1060]

(Testimony of H. McKay Allen.)

Q. Was there also another claim there in that loss?

A. Yes, I have just come to that, Mr. Merrill.

Q. Yes, Mr. Allen.

A. The other file pertains to the same loss, the same date, but was a collision damage done to the Idaho Refining Company's unit which resulted in an insurance loss of \$1,726.38.

Q. That is exclusive of cargo, is it not?

A. Yes, this pertains to the collision coverage, only. The total loss, as per the estimate shown on the repairs and so forth is \$1,926.00. In other words, there was a deductible both on the tractor and on the trailer.

Q. There was a \$200 loss in that case absorbed by the Refining Company? A. Right.

Q. Was the City paid anything for damages for the gasoline flooding the streets and causing the necessity of patrolling the street?

A. I have been unfamiliar with these files because a Boise adjuster handled them, and they just arrived today. I do feel that that is the case. Here is a bill in the file to the City of Weiser, the fire department, service of watchmen, sand, showing a total payment to the city of Weiser in the amount of \$90.40 which was the figure that I reported to you a while ago as the entire claim. Apparently I am in error on that.

Q. Yes. [1061]

A. The amount of the loss to the damaged

(Testimony of H. McKay Allen.)

parked car was \$52.55, as per repair bill I have here.

Q. That is an additional amount?

A. That is an additional amount in that same case. That completes the files that I have here on accidents involving Policy No. FM-227.

Q. Now, Mr. Allen, did you have anything to do with the—did your company have anything to do with the adjustment of the loss of Henry Henricksen,—just a moment,—of George White near Twin Falls? A. Yes.

Q. That is under Policy FM-227, is it not, October 24, 1941?

A. No,—I beg leave to correct my other remark there. That loss, according to our records, was handled by the Nichols Adjustment Bureau, which is a separate adjusting firm.

Q. I see. Did you have anything to do with the adjustment of the loss of Victor Ellingford on September 6th, 1941, amounting to a loss of \$112.50?

A. Yes, our Twin Falls office handled that, and unfortunately, I requested that they forward the files, but the files were not sent over due to an error in that office.

Q. Did your company have anything to do with the adjustment of the loss of Myron Whitesides which occurred September 12, 1941? Near Layton, Utah, and in which two claims were paid, one for \$50 and one for \$1,044.10? [1062]

A. Our record indicates that that was referred to the Nichols Adjustment Bureau.

(Testimony of H. McKay Allen.)

Q. I see. And did your company have anything to do with the adjustment of the loss of Boyd Cornia where the accident occurred on May 15, 1941?

Mr. Penfield: Counsel, I understood that you were limiting this to Policy FM-227?

Mr. Merrill: That is correct, for the present.

Q. Now, then, as I understand it, Mr. Allen, your testimony only has to do with the losses actually adjusted through your office? A. Yes.

Q. And that you are acquainted with additional losses which were adjusted by other adjustment companies? A. Yes.

Q. Mr. Turner testified to a number of losses which you have not testified to. He would get the information, would he not, as an agent of the company from the other companies who might adjust the losses? A. Yes, sir.

Q. And he would have the information that you had and also the information these other companies had? A. Yes, sir.

Q. That then accounts for the fact that your report is not as complete as Mr. Turner's? [1063]

A. That is correct.

Q. And your testimony is devoted merely to those adjustments that were made by the Fire Insurance Companies' adjustment Bureau here in Idaho? A. Correct.

Mr. Merrill: I think that that is all,—pardon me a moment. We did not go into Policy FM-199.

Mr. Penfield: I was wondering about that.

Q. (Mr. Merrill) Mr. Allen, would you advise

(Testimony of H. McKay Allen.)

us what record you have of accidents occurring under Policy FM-199?

A. On December 11, 1940, Mr. H. H. Hendricks was operating an Idaho Refining Company unit insured under policy FM-199,

Q. Is that Hendricks, or Hendricksen?

A. I may have that wrong—It is Mr. Henry H. Hendricksen, I beg your pardon.

Q. Yes. What was the loss?

A. The collision portion of that loss, in other words, the amount paid the Idaho Refining Company for damage to their own equipment was \$298.53.

Q. Then they would also have suffered an additional loss, the deductible?

A. \$100 deductible in that instance.

Trial Examiner Riemer: What was that figure again, please? \$299.38?

Mr. Penfield: \$298.53. [1064]

A. In connection with that same claim under coverage extended by the public liability feature of the same policy, a death and injury claim was settled for a total of \$2,000 on that same case. So far as the legal liability on the part of the company, which is the thing that the adjuster is mainly interested in, it was felt that we should settle that claim.

The physical facts were that the truck travelled 135 feet in all following the first application of the brakes. There was testimony by the driver and by the state police to the effect that he was travelling

(Testimony of H. McKay Allen.)

15 or 20 miles an hour, but the physical evidence made it seem that it was a case where the driver would be found negligent in court, and settlement was accordingly made.

The next loss under policy FM-199, Mr. Hollis Walker, was the driver, and the accident occurred on August 15, 1941. He backed into a parked truck at a service station, resulting in damage of \$25.10. I would say that the driver was negligent.

Trial Examiner Riemer: Would you read that answer, please, Mr. Reporter?

(Thereupon the last answer of the witness was read aloud by the reporter as hereinabove recorded.)

A. The next loss under that same policy, Mr. Fred Pearson, at Challis, on June 10, 1941, rolled a truck over after driving along with a heavy load on a narrow road, resulting in damages [1065] of \$1250 loss to the insurance company.

Q. Would that also mean an additional loss of cargo? A. Yes.

Q. Which the insurance did not cover?

A. That is correct.

Q. And then there was the deductible there of \$200?

A. In that case, the deductible was \$100.

In addition to the equipment insured as a truck, there was some equipment in that loss that was not a part of the truck, such as tanks, and other things that were a total loss to the Idaho Refining

(Testimony of H. McKay Allen.)

Company. That completes the files that I have on that.

Q. You don't have then the loss that occurred when Myron Whitesides was driver on the Weber County Line in the State of Utah?

A. To the best of my information, that loss was handled by the Nichols Adjustment Bureau of Salt Lake.

Q. Do you have any record of its amount?

A. The information furnished me by the company shows the amount paid on that loss was \$1,044.10.

Trial Examiner Riemer: \$1,044.10?

The Witness: Yes, sir.

Mr. Penfield: Counsel, I believe that is under Policy FM-227, isn't it?

The Witness: That is right. [1066]

Q. Yes. Now, you find that you have been furnished with that additional loss, by the company. That was the loss near Layton, Utah, I understand, that occurred September 12, 1941 of Myron Whitesides?

A. Yes.

Q. And do you have information on the loss under Policy FM-199 of Boyd Cornia of \$2500 at Pocatello?

A. Yes, I have a record furnished me by the company of that loss showing an amount paid of \$2500 from our records. I do not have the file on that. The apparent conclusion in the summary of the company is that it was the fault of the driver.

[1067]

GILBERT SHEETS

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your full name, please?

The Witness: Gilbert Sheets.

Trial Examiner Riemer: And where do you reside, Mr. Sheets?

The Witness: Salt Lake City, Utah.

Trial Examiner Riemer: Thank you. [1078]

Direct Examination

Q. (Mr. Merrill) Mr. Sheets, during the year 1941, were you president of the Idaho Refining Company, the respondent herein?

A. Yes, sir.

Q. And as such officer, I assume of course, that you did considerable of the business of the corporation?

A. Yes, sir.

Q. I believe you are also a member of, or an officer of, the Sheets Insurance Company?

A. No, the E. L. Sheets Company.

Q. Doing business in Salt Lake City?

A. Yes, sir.

Q. Are you acquainted with R. F. Turner at Pocatello, Idaho?

A. Yes, sir.

Q. Do you know Decker Little of Salt Lake City, Utah?

A. Yes, sir.

Q. How long have you been acquainted with these gentlemen?

(Testimony of Gilbert Sheets.)

A. I have been acquainted with Mr. Turner possibly six years; with Mr. Little, possibly 35 years.

[1079]

Q. What was the policy, if you know, that covered the company's property—the trucks, I mean, their driving equipment, during the latter part of 1941? A. FM-227, or 229,—which was it?

Q. 227. A. 227.

Q. And when was that policy written?

A. August, about the 27th, as I recall.

Q. Of what year? A. 1941.

Q. Now, was that preceded by another policy in the same company? A. Yes, sir; FM-199.

Q. 199. Did you have any conference with Mr. Little or with anyone else, touching the rewriting of the policy under the number of FM-227?

A. In June or July of 1941, Mr. Chadwick, the vice-president of the Loyalty Group, came to Salt Lake City to discuss with Mr. Little this policy, with several others. At that conference, Decker asked me to come down and talk with Mr. Chadwick and Mr. Chadwick said that he was going to get off the line.

Q. When you say "Decker", you mean Decker Little? A. Decker Little.

Q. Why did Decker Little ask you to come and discuss this particular policy?

A. Because he was a representative of the company, and a friend [1081] of mine.

Q. Had there been any comment touching cancellation prior to that time?

(Testimony of Gilbert Sheets.)

A. Yes. Mr. Little discussed it with me several times prior to that time.

Q. What was the result of your conference with the officers of the insurance company in July, 1941?

A. After discussing it with us, I told Mr. Chadwick that the reason I felt our losses were so high at that time was due to the inexperience of our drivers in handling big equipment, and that after they had gotten used to the equipment, they would be handled better, without any loss, and I convinced Mr. Chadwick to that effect, and he thought that was also correct, so he went back and said he would have to take it up with Mr. Sullivan, the executive vice-president of the West Coast branch of the Loyalty Group, and he then gave permission to write the policy.

After that policy was written, it apparently wasn't the inexperience of the drivers, but the carelessness of the drivers.

Q. That is Policy FM-227?

A. FM-227,—because their experience, instead of getting better, got continually worse.

Q. Now, during the period of time that policy 227 was in effect, were there any additional or other criticisms made [1082] of the losses by Mr. Little to you?

A. Yes, sir. Every time we had a loss, he would take it up with me, and ask me why, and what we could do about it. And also informed me that he was very positive the policy would be cancelled if they had very many more. In fact, on

(Testimony of Gilbert Sheets.)

each one, he said, "This is the last one, I am afraid."

Q. When the matter was taken up with you in that way, what did you do?

A. I would notify Mr. Gilbert Moyle, who was general manager.

Q. Here in Pocatello?

A. Yes, sir; I would either come up or telephone him, or write him. I have done so at various times.

Q. Do you recall when the matter of the cancellation of policy FM-227,—when it became apparent that it was going to be cancelled?

A. Well, I knew when Mr. Little came up that that was his primary reason for coming to Pocatello, and I think that he got up here on the 2nd or 3rd of the month, but he came in my office on the 8th—

Q. Of what month?

A. Was it in November that the policy was cancelled?

Q. Yes.

A. The 8th of November was Saturday.

Q. 1941?

A. 1941, and he showed me the letter that he sent to Mr. Sullivan, [1083] and he said, "I am sorry that I had to cancel the policy, but there is nothing else that I can do. I have orders from Sullivan, and I am on a hot seat, and I can't stay on any longer."

Q. What did you say, if anything?

(Testimony of Gilbert Sheets.)

A. I said, "We are going to have a bad time renewing this one, getting anybody to carry this one."

Q. And what did he say?

A. He said, "In that case, I will give you some extra time in which to renew the policy, rather than the ordinary five days."

Q. Now, that was, you say, on Saturday, the eighth?

A. Yes, sir.

Q. Now, then, what did you do, Mr. Sheets?

A. I contacted Mr. Moyle, and I can't remember—it was late Saturday I did it, and I can't remember if I contacted Mr. Moyle on that Saturday—

Q. Which Mr. Moyle?

A. Mr. Gilbert Moyle. Henry Moyle was on the Coast, and I am pretty sure that I contacted Mr. Moyle by telephone on that Saturday; if not, it was the following day.

Q. Then did you later have a conference with Henry D. Moyle, the vice-president of the company and general counsel?

A. Mr. Moyle was out of town until Tuesday.

Q. That is Henry D. Moyle?

A. Yes, Henry D. Moyle, and as soon as he got in town, he [1084] contacted me, and I went down and had a conference with Mr. Moyle for about three hours and at that time, we discussed the policy, and discussed the drivers, and we decided at that meeting that the only thing to do to get rid of our loss ratio and get a policy that we could possibly keep in force for a while, was to discharge all

(Testimony of Gilbert Sheets.)

of the drivers, because it wasn't just one or two of the drivers, but the whole bunch, with one or two exceptions, that were careless.

So we thought that rather than have one or two that were good, they would have to take the penalty for the whole bunch, because like a bunch of apples in a cart, when one goes bad, the whole bunch goes bad, so Mr. Moyle and I discussed this, and he left the next day, to inform Gilbert Moyle of our decision.

Q. What date, if you recall, was the day this decision was reached to discharge all of the drivers?

A. November 12th, the day he arrived from California. He left on the 13th for Idaho for a conference with his brother.

Q. And where did this conference on November 12, 1941 take place?

A. In Mr. Moyle's office.

Q. In the office of Henry D. Moyle?

A. Yes, sir.

Q. In Salt Lake City? A. Yes, sir.

Q. What was the purpose—strike that, Mr. Reporter. [1085] What particular reason did you have for determining to, or deciding to discharge all of the truck drivers?

A. Well, there were so many of them, and you couldn't pick one or two out of the bunch, because it wasn't one or two but a majority of them, so far as I could see.

Q. What effect would the discharge of all have on the insurance matter as you viewed it?

(Testimony of Gilbert Sheets.)

A. It would show the insurance company that we were serious in trying to get a decent loss ratio and wanted to cooperate with them as much as we could, because every time we have a loss, it penalizes us as well as the insurance company.

Q. Now, in your discussion with Mr. Henry D. Moyle, and in the discharging of these drivers, state whether or not the subject of labor unions plays any part, whatever?

A. Never even heard of a labor union at that time.

Q. You mean as connected with the company?

A. As connected with the company. The only union that we ever heard of or had any contact with was the local union they had up there, and with which we had a fair contract.

Q. That is what is called the Association?

A. That is the Association.

Q. You signed one or two—two, I believe, labor contracts with that Association?

A. I think that I signed the original, and Mr. Gilbert Moyle signed an extension. [1086]

Q. Then at the time that these drivers were discharged, did you know that—whether or not they belonged to any labor organization?

A. I did not.

Q. Or whether they belonged to Local Teamsters Union 440? A. No, sir.

Q. Had that matter ever been discussed with you?

(Testimony of Gilbert Sheets.)

A. That matter had never been discussed with me.

Q. Had you been told by anyone that there was such a union? A. No, sir.

Q. Or that any member of the employees of the Idaho Refining Company had any membership in it?

A. No, sir; I didn't see how they could, with their other representative,—

Q. Yes, but what I want to know, is: did you, as vice-president of the company—

A. I am the president.

Q. Yes, as president of the company, have any information of any kind or character touching membership of any of the truck drivers in any union?

A. No, sir.

Q. I mean any labor organization, and particularly 440?

A. No, I never heard anything about any labor union up here in connection with our company.

Q. Did labor unionism have any part of any kind or character in [1087] your determination to discharge the employees,—I mean to discharge the drivers? A. No, sir.

It was never even discussed, or never even thought of.

Mr. Merrill: That is all. You may cross examine.

Cross Examination

Q. (Mr. Penfield) Mr. Sheets, what was the

(Testimony of Gilbert Sheets.)

date that you testified you had this meeting at which you decided to discharge the entire crew?

A. The 12th.

Q. That took place in Salt Lake City, did it?

A. Yes, sir.

Q. You stated that you concluded that it was necessary to discharge all of the drivers. Did you know anything about the accident records of the individual drivers?

A. Yes, sir.

Q. Didn't you know that many of them had never been involved in any accident?

A. Yes, sir.

Q. How many of them?

A. Well, the accidents were so frequent that I never kept exact track of the different men's names, but every time it would be a different man. When you get a record like that, with such a few drivers as we have, and as many accidents as we have, you are just positive the whole organization, that all of [1088] the drivers are careless, and all have the same attitude.

Q. Do you know whether James Ayers was ever involved in an accident?

A. I don't know.

Q. Do you know whether S. Burkholder had ever been involved in an accident?

A. I couldn't tell you any one person's name that was in any accident, but I know that we had so many accidents,—13 in 2½ months, and out of the number of our drivers, you can figure that percentage.

(Testimony of Gilbert Sheets.)

Q. You knew a number of these accidents didn't involve drivers driving oil trucks?

A. Yes, sir.

Q. You didn't discharge those drivers, did you?

A. We discharged all of the truck drivers, because that is where all of the trouble was, all of our big accidents were on the big trucks.

Q. You heard some of these insurance men here testify yesterday, did you not, that a number of smaller accidents is a material factor?

A. It is also a material factor.

Q. And you knew that some of these accidents involved people who weren't drivers of transport trucks, but who were working for the Idaho Gas & Oil Company—

A. You will always have that. [1089]

Trial Examiner Riemer: Just let counsel finish his question.

Q. —and the Covey Gas & Oil Company, do you not?

A. Yes, sir.

Q. Yet you didn't conclude that it was necessary to discharge those drivers?

A. They weren't the main offenders.

Q. But they had been involved in accidents in which there had been claims?

A. Slightly, in comparison to the others.

Trial Examiner Riemer: How did you know that, Mr. Sheets? The insurance representative said that they had never broken it down.

The Witness: I never broke it down, but you can tell. We knew that they were the big trucks.

(Testimony of Gilbert Sheets.)

You can't have a \$2500 loss on,—a collision loss on a \$1200 unit.

Q. How many losses were there that involved trucks other than the Idaho Refining Company trucks that were the big transport trucks?

A. What was your question?

Q. How many of the claims were there?

A. There were 13 yesterday reported. I don't know just how they were broken down. They reported 13 claims in two months as Mr. Turner had the records. Wasn't that correct, or was it eleven?

Q. Thirteen.

You don't know how many of them involved drivers of other [1090] vehicles than transports, do you?

A. No, sir.

Q. And you didn't know at the time?

A. I didn't know exactly, no.

Q. As a matter of fact, you never made any attempt to determine which drivers were involved in accidents, and which ones were not?

A. You mean which company?

Q. Which driver for any of the companies?

A. I know the transports—I knew when a transport had an accident, and I knew that involved one of the truckdrivers.

Q. Do you know how many accidents there were involving truck drivers of transports?

A. No, but it seems to me that they were practically all transport drivers, the main part of them. They were the ones that particularly came to my attention.

(Testimony of Gilbert Sheets.)

Q. Then did you make your decision on the basis that you assumed that most of these drivers were the transport drivers?

A. The ones that were having the bad accidents, yes.

Q. That was just because you assumed it was these transport drivers, is that it?

A. I assumed by actual records.

I knew that certain ones had come up.

Q. Did you make any effort to determine, in any one of these individual accidents, who was at fault?

[1091]

A. I read some of the reports. Mr. Little would come and advise me exactly what happened.

Q. As a matter of fact, you heard Mr. Little testify that the thing he was concerned with was the loss ratio, and he made no effort to ascertain what was the cause?

A. The loss ratio is the big factor, but another big factor is the fact that when you have a lot of little losses, you know, a lot of little accidents are bad, because you know that you are likely to get a big bump. Your big ones are the ones that take the premium up. Remember, I am an agent.

Q. How many big accidents did the company have among the 13, do you know?

Mr. Merrill: You mean the insurance company?

Mr. Penfield: I mean the Idaho Refining Company, and the——

A. No, I don't.

Q. So you made your decision to discharge all of the drivers without knowing how many big ac-

(Testimony of Gilbert Sheets.)

cidents there were, and how many small accidents, and who was involved in them, is that correct?

A. That isn't quite right.

Q. What is the fact, then?

A. We certainly had some idea of what we were doing.

Q. What idea?

A. We knew by our loss ratio; we didn't break everything up.

Q. You didn't make any effort to find out which drivers were [1092] responsible, which ones were at fault, how many accidents involved trucks of the Idaho Refining Company, or trucks of the Idaho Gas & Oil Company or the Covey Gas & Oil Company?

A. We didn't break them down that way, but we know the transports, and we know the main part of our big driving, out of town driving, was all done by the Refinery, and I also had Mr. Little's report regarding the various speeds of these two drivers, which also was a determining factor.

Q. You didn't have any other checks than those of Mr. Little, did you, in regard to the speeds of drivers?

A. Well, Mr. Little had brought down several reports, and he told me that there was something regarding the policy's objecting to them going at excessive speeds, told me that they ought to cut down their speed, some way. I don't just remember what that was, exactly.

(Testimony of Gilbert Sheets.)

Q. Isn't it a fact that the company had governors on their trucks?

A. I don't know; I doubt it.

If they did have, they didn't work in that particular,—in those two particular cases, apparently.

Q. Isn't it a fact with respect to—I will withdraw the question.

As a matter of fact, under policy 227, there only had been three accidents involving substantial losses, did you know that?

A. I never broke them down. I just got the information from [1093] Mr. Little that there was a truck involved at a certain place, and the size of the truck, and those trucks were all—the ones that I remember were big transport trucks.

Q. And in so far as those accidents were concerned, the drivers concerned had been discharged because of the accidents, is that not correct?

A. Of that, I am not sure.

Q. How frequently did you come to Pocatello in connection with your position as president of the company in 1941?

A. I couldn't tell you how often; approximately once a month.

Q. Approximately once a month. You didn't have much to do with the actual affairs and operations of the plant, did you? A. No.

Q. You didn't actually see the employees and have very much to do with the employees?

A. No.

Q. Your chief contact with the company would

(Testimony of Gilbert Sheets.)

be at the meetings of the Board of Directors at Salt Lake City, would it not?

A. That is true.

Q. So you were not in a position to know very much about any union activities going on around the plant, were you?

A. I got a report every day from the plant.

Q. Did that report include union activities?

A. No, there wasn't any there that I ever heard of. [1094]

Q. I see. Now, from reports that you received, what is the fact as to whether or not the majority or a large percentage of these accidents occurred to the drivers of the transports, or with the small cars around the plant and other stations?

A. It seemed that all were on the large transports, the ones that I remembered.

Q. Yes. After you had learned of the intended cancellation of the insurance on the transport equipment—on the truck equipment—was there anything that you could do to secure additional or other insurance without the discharging of these drivers?

Mr. Penfield: May I hear that question, Mr. Reporter?

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

Mr. Penfield: Oh, I object to it, Mr. Examiner.

Trial Examiner Riemer: The objection is sustained. [1097]

Q. What other alternative, if any, did you have, viewing the picture as it was before you, after the

(Testimony of Gilbert Sheets.)

cancellation of this insurance to secure other insurance, other than which you did?

Mr. Penfield: I object to that upon the same ground.

Trial Examiner Riemer: Sustained. [1098]

Redirect Examination

By Mr. Merrill:

Q. As a matter of fact, in this particular instance, you had had,—I will withdraw the question. You had spent a considerable portion of your life in the insurance business had you not, Mr. Sheets? A. About 20 years.

Q. And as such, had become thoroughly acquainted with the attitude of insurance companies touching such losses? A. Yes, sir.

Q. So that when you met with Mr. Henry D. Moyle on this particular problem, you were also possessed of information touching insurance?

A. Yes, sir.

Q. And the attitude of insurance companies with problems like this presented? A. Yes, sir.

Q. And did that have also an effect on the determination of this discharge of the drivers?

A. A very definite effect. [1100]

CAPTAIN ARCH G. WEBB

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows: [1102]

Trial Examiner Riemer: Will you state your full name, please, Captain?

The Witness: Arch G. Webb.

Trial Examiner Riemer: Where are you stationed?

The Witness: Captain in the United States Army Reserve, Camp Hahn, California.

Direct Examination

By Mr. Merrill:

Q. Captain, have you previously lived in Pocatello? A. Yes, I have.

Q. And have you been heretofore connected with the Idaho Refining Company? A. I have.

Q. During what period of time?

A. From July of 1938 until December of 1940.

Q. July of 1928?

Trial Examiner Riemer: 1938?

The Witness: 1938.

Q. And in December, 1940, what occurred—did you——

A. I was then called on active duty or into active duty in the United States Army.

Q. Now, during the period of time from July, 1938 until December of 1940, what position, if any, did you hold in the Idaho Refining Company organization.

(Testimony of Captain Arch G. Webb.)

A. I was—most of that time I acted as secretary of the [1103] company. I was not made secretary until perhaps August.

Q. Of what year? A. 1938.

Q. Yes. Now, were you in the employ of the company at the time of the organization of the Idaho Refining Company Employees Benefit & Labor Association?

A. I don't know. I rather think not. The company had been in operation for approximately one month before I arrived, and it is my recollection that the organization was in existence before I affiliated with the company.

Q. (Mr. Merrill, continuing): No, when you became employed by the [1104] Idaho Refining Company, which was in August, 1938,—

A. July, 1938, I believe,—yes, July.

Q. —did you meet a man by the name of George Hibbler? A. Yes, I did.

Q. What was his position, if any, with the company then?

A. He was a chemist for the company.

Q. Did he have any supervisory powers of any kind?

A. No, none whatever, I would say.

Q. No one was working under him?

A. He had no one under him.

Q. And just doing the chemical work that was necessary in testing the gasolines, oils and so forth of the company? A. That was all.

(Testimony of Captain Arch G. Webb.)

Q. Did you become acquainted with a man by the name of George Mann, when you were employed with the company? A. Yes, sir.

Q. What were his duties, if you know?

A. He worked on the still. He was a helper on the stills, as I recall it.

Q. Did he have any supervisory duties to perform? A. None whatever.

Q. During your connection with the company, were there discounts given to anyone for gasoline purchased, gasoline and oil purchased at the Covey Gas & Oil Company of Idaho?

A. Yes, there were. [1105]

Q. And to whom were those discounts given?

A. To all employees making purchases.

Q. Was there any distinction made between employees who were members of the Association and employees who were not, so far as these purchases were concerned?

A. None whatever.

Q. In other words, anyone who was an employee of the Idaho Refining Company would be entitled to the discount for gasoline purchased at the Covey Station irrespective of his membership in the Association? A. That is right. [1106]

Q. What is the fact, then, as to whether or not these deductions were made whenever the employee, and for whatever purpose he requested it? Was or was not that so?

(Testimony of Captain Arch G. Webb.)

A. The fact is, they were deducted when the employee requested it.

Q. Irrespective of the purpose?

A. That is right. [1107]

Q. Did you have any contact with August Rosqvist in the year 1939 or thereabouts?

A. Yes, sir; I did.

Q. What was that contact?

A. I met with August Rosqvist in his office at the Labor Union Temple with Mr. Brandt in connection with having the Idaho Refining Company removed from the Unfair List.

O. At whose request did you attend that meeting?

A. As to that, I can't really say. Mr. Rosqvist had been—had approached us numerous times at the refinery.

Q. Mr. Rosqvist or Mr. Brandt?

A. Mr. Brandt,—I beg your pardon, and incidentally, I think that Mr. Rosqvist had also approached us, and I had been unable——

Trial Examiner Riemer: About what, please?

The Witness: About endeavoring to unionize the plant, so he had been to see me at the office, several times, and due to the nature of my work, I was travelling quite a little and was not in, so consequently I called in at his office knowing that he had called out to the office several times to see me, and so I called in at his office one day and talked to him in connection with unionizing, or

(Testimony of Captain Arch G. Webb.)

ascertaining his desires in regard to unionizing the plant.

Q. And what was the result, if any, of that meeting?

A. The result was that I invited him out to the refinery at his convenience to discuss with the employees of the refinery [1108] the matter regarding unionizing the employees.

Q. Now, did Mr. Rosqvist and Mr. Brandt later come out for a meeting with the employees of the refining company? A. Yes, they did.

Q. Do you remember who called the meeting, or how it was arranged?

A. To the best of my recollection, notice was published calling this meeting of our employees of the refinery.

Q. And did you attend the meeting?

A. Yes, I did.

Q. Where was it held?

A. It was held in the bookkeeping office of the refinery.

Q. Do you recall who called the meeting to order? A. No, I do not.

Q. What, if anything, did you do or say at the meeting?

A. I introduced Mr. Rosqvist and Mr. Brandt, stating that they were representatives of the American Federation of Labor and were interested in trying to unionize the members of our plant, and that they were there at that meeting to present their story.

(Testimony of Captain Arch G. Webb.)

Q. What comment, if any, did you make relative to the right of the employees to act as they wished?

A. Well, I made no comment other than the fact that it was a matter which the employees themselves would have to decide.

Q. Did you make any comment there in substance or effect that the unions could do nothing that the company's own Association [1109] could not do?

A. Would you repeat that question, please?

Mr. Penfield: Would you read it to him, Mr. Reporter?

(Question read aloud by the reporter as hereinabove recorded.)

A. I did not.

Q. After you had introduced Mr. Rosqvist and Mr. Brandt, then what occurred?

A. Mr. Brandt made a few brief remarks, and then he was followed by quite a discussion by Mr. Rosqvist, or quite a speech by Mr. Rosqvist.

Q. Then what happened?

A. I thanked the gentlemen for coming out on behalf of the employees, and Mr. Rosqvist and Mr. Brandt left the meeting.

Q. When did you leave, if at all?

A. I left the meeting at the same time they did.

Q. And where did you go after you left the meeting?

A. Well, I retired to my office. I stayed in the lobby for a few minutes and visited with Mr. Brandt and Mr. Rosqvist.

(Testimony of Captain Arch G. Webb.)

Q. After they had left the meeting?

A. After they had left the meeting, that is, I stayed in the lobby of the office, I shook hands with them and again thanked them for coming out to the meeting and said "Good night".

Q. Do you know whether or not there was a vote—did you at any time go back into the meeting? [1110]

A. No, I did not.

Q. Do you know whether or not there was any vote taken at that meeting?

A. Yes, I do know that there was a vote taken.

Q. Where did you get that information, and when?

A. Immediately following the meeting by the employees who attended.

Q. Were you present when that vote was taken?

A. I was not.

Q. Were you present when a man by the name of A. L. Heckert was employed, February 27, 1940?

A. You mean was I at the refinery when he was employed?

Q. Yes. A. Yes, I was there.

Trial Examiner Riemer: What was that date, please, Mr. Merrill?

Mr. Merrill: February 27th, 1940.

Q. Do you recall his coming into the office at or about the time of his employment?

A. As to that, I can't say for sure, because I am not certain that I have the man *properly* identified, but if I do, I was there at the refinery when he came, if he is the man I think that he is.

(Testimony of Captain Arch G. Webb.)

Q. Did you hear any discussion by Mr. Moyle or any other officer of the company with reference to any union activities or [1111] membership, with him? A. No, I did not.

Q. Did you hear at that time, or at any other time, Kermit Rice make any inquiry as to whether or not Heckert or any other employee belonged to any labor union? A. No, I did not.

Q. Have you yourself ever inquired of any prospective employee or any employee of the Idaho Refining Company as to whether or not he belonged to any labor union?

A. No, sir; I haven't.

Q. Have you ever made any inquiry of any kind or character of an employee, either then engaged or a prospective employee, as to whether or not he had any labor union affiliations?

A. No, sir; I haven't.

Q. Have you ever made any comment to any such person touching labor affiliations or labor unions? A. No, sir; I haven't.

Q. Has that subject ever been discussed by you, or in your presence, with any employee or prospective employee of the Idaho Refining Company?

A. No, it hasn't.

Q. Did you know a man by the name of Wayne Douglas? A. Yes, I did.

Q. Who was he?

A. Just a minute—I would like to have you re-read the question before this last one in regard

(Testimony of Captain Arch G. Webb.)

to my discussing union activities [1112] with some of the employees.

Mr. Penfield: Yes. Will you read the question, Mr. Reporter?

(Thereupon the following question was read aloud by the reporter:

“Q. Have you ever made any comment to any such person touching labor affiliations or labor unions?”)

A. I would like to correct that answer: upon another occasion, sometime prior to the meeting, I was approached——

Q. Prior to what meeting?

A. This meeting which Mr. Rosqvist spoke.

Q. Yes.

A. I was approached by a couple of truckdrivers who inquired about the union, or affiliating with an organized union. My reply to them was that that was their business, that they could do what they wanted to.

Q. I see.

Trial Examiner Riemer: Can you fix the time of that, Captain Webb?

The Witness: No, I can't, but I can give you the approximate time.

Trial Examiner Riemer: Approximately when?

The Witness: It was,—let's see,—I joined the company in 1938. I would say that it was sometime during the fall of 1938.

(Testimony of Captain Arch G. Webb.)

Q. (Mr. Merrill): Do you remember who those two truckdrivers [1113] were?

A. I remember one of them—well, I can't say that I can identify any of them.

Q. Either of them?

A. For sure. I think Jim Ayers was one of the employees.

Q. To whom you made that remark?

A. Yes, sir.

The reason I recall that is because these boys who made the inquiry were new employees who were formerly employed by Elmer Carr, and we bought Elmer Carr's equipment, and we also took with it the truck drivers.

Q. Yes. Now,—

A. So it would be his truck drivers.

Q. Do you have any further comment to make on that instance?

A. No, I havent.

Q. Now, with respect to Wayne Douglas, did you see him at one time at American Falls?

A. Yes, I did; I have seen him several times at American Falls.

Q. Do you recall a time when you saw him stop there and you had a conversation with him?

A. Yes, I do.

Q. Fix the time as nearly as you can, and relate the incident, please?

A. Wayne Douglas was driving a transport loaded with gasoline to some point west of American Falls. I had been on the road [1114] and working late, and was returning home, I would

(Testimony of Captain Arch G. Webb.)

judge it was approximately 10:00 o'clock at night. I noticed a couple of our trucks stopped beside an eating place, just before you make the last turn to enter American Falls. One of the drivers I immediately recognized as Wayne Douglas; the other one got in his truck and left, I don't recall who that was, but I proceeded immediately to remind Douglas that he was working for the company, and that he was to discharge his duties honestly and keep about his business, and told him to proceed, which he did.

Q. How long—was there any comment made at that time about the fact that he had just left the refining company with his load?

A. No, but American Falls as I recall it is approximately 25 miles from Pocatello, and he could not have been on the road longer than $3/4$ of an hour, that is the driving time between those two points would not have exceeded $3/4$ of an hour, so there was no excuse for his stopping. Incidentally, he told me that he didn't eat before he left the refinery and I told him that it was—that is, that he had no business eating on the job, that he was to eat before he took the truck and was to keep it moving and not to delay en route.

Mr. Penfield: Counsel, I don't believe that any date has been fixed on this.

Q. Fix the date as near as you can, if you have not already [1115] done so.

A. I don't know that I can fix the date. I don't remember when Douglas joined the company, but at

(Testimony of Captain Arch G. Webb.)

the time that this incident occurred, he was in the employ of the company. It would be sometime in 1940, I think, probably in the summer or spring of 1940,—the summer, I suppose, because my recollection is that the weather was warm, and as nearly as I can recall, that would be the approximate time.

Mr. Merrill: You may cross examine.

Cross Examination

Q. (Mr. Penfield): Captain Webb, were you a member of the Employees Benefit and Labor Association? A. Yes, I was.

Q. When did you join?

A. I joined shortly after I became employed by the company.

Q. Did I understand you to say that you came to work for the company in July, 1938?

A. Yes, about the middle of July.

Q. You don't recall whether the Association was in existence at that time, or whether it was not?

A. No, I have no recollection.

Q. Did you maintain your membership in the Association continuously up until the time that you left the company? A. Yes, I did. [1116]

Redirect Examination

Q. (Mr. Merrill): Captain Webb, do you recall a meeting or a [1122] gathering of the employees of the Idaho Refining Company, sometime in the fall of 1939, or the winter of 1940, when Henry D. Moyle, vice-president, discussed certain

(Testimony of Captain Arch G. Webb.)

matters from the steps of the office building with a gathering? A. Yes, sir; I do.

Q. Are you able to fix the time?

A. I can't fix the date, but I would say that it was sometime in the early—sometime during the winter of 1940, or early spring. It occurred during the forenoon—the meeting occurred during the forenoon at the refinery, or at the back of the office at the steps leading from the back office of the refinery.

Q. What, if you recall, was the occasion of the meeting? And what Mr. Moyle say?

Trial Examiner Riemer: This is Henry Moyle?

Mr. Merrill: Henry D. Moyle.

A. The cocasion for calling it, I think, was this: we had had numerous inquiries from some of the employees pertaining to obtaining homes under this cheap housing program.

Q. Under the Federal Housing Program?

A. Yes, it was sponsoring it, so Henry—or Mr. Moyle addressed,—I called all of the employees of the refinery, including the operators on the stills, and the plant may have even closed down, I don't recall, but in any event, I called all of the employees, all of the office employees and men in the yard and on the stills, and he told them that he would—in reply [1123] to these inquiries regarding homes, the employees wanted to build, he told them that the company would do everything that it could to try to enable them to build homes, that

(Testimony of Captain Arch G. Webb.)

they would endeavor to see that they were financed, and the company's support would be lent to that end.

He also discussed at that meeting, the matter pertaining to discounts of employees, and told them that they would be able to buy gas at the main Covey station at a certain figure above the actual cost, sufficient to just take care of the expense involved in handling it; in other words, there would be no profit derived by the company from the sale to the employees.

Q. Now, you say that that was a meeting of all employees? A. Yes, that is right.

Q. Was there any comment made of any kind there that day touching the Employees Association?

A. I have no recollection of it at all.

Q. Do you have any recollection of any mention being made of the membership in the Association, or of the Association in any respect?

A. No, sir; I don't.

Q. Now, I understool you to say on your cross examination that you are a member of the Association? A. That is right.

Q. And that you had never attended any meetings except one?

Mr. Penfield: No, he didn't testify to that [1124]

Q. Is that the fact?

A. No, I said that I had no recollection of ever having attended any more meetings than one, in addition to the one at which we brought out Mr. Rosqvist.

(Testimony of Captain Arch G. Webb.)

Q. Assuming that was an Association meeting, to which you brought Mr. Rosqvist,—I understood you to say that that was a meeting of all employees?

A. That is right.

Q. And not an Association meeting?

A. That is right.

Q. If that be the case, your attendance at an Association meeting would be limited to one?

A. That is right.

Q. And then you went in late and left before the meeting was over? A. Yes, sir.

Q. Did you participate in any voting?

A. No, sir.

Q. Or in any discussion? A. No.

Q. Did you ever participate in any activities of this Association? A. No.

Q. Why did you join?

A. Oh, to derive the insurance benefits that may have been [1125] offered by the Association.

Q. Are they what are known as the sick benefits? A. That is right. [1126]

Trial Examiner Riemer: Captain Webb, regardless of whether the products of the Idaho Refining Company were distributed by the Covey Gas & Oil Company of Idaho, the Reliance Oil Company for Idaho, isn't it true that those products were advertised at those stations as the products of the Idaho Refining Company?

A. No, that is not correct. The Covey Gas & Oil Company had its own trade-name and advertised its products under that trade-name. The Re-

(Testimony of Captain Arch G. Webb.)

liance Oil Company in this area advertised Idaho Refining Company products.

Trial Examiner Riemer: Captain Webb, can you tell me and give me some explanation for it, the policy of the Idaho Refining Company with respect to its truckdriver stopping along the road and getting a cup of coffee, or hot dogs?

The Witness: Well, naturally, a company trying to operate at a profit would not want a truck driver loitering on the way, so we continuously admonished the drivers not to stop, and told them that if it continued, they would be discharged.

Trial Examiner Riemer: What was the reason for that policy? [1129]

The Witness: Well, the reason being——

Trial Examiner Riemer: Loss of time, mostly?

The Witness: Loss of time, and additional expense to the company.

Trial Examiner Riemer: I can understand that policy with respect to a truckdriver stopping, let us say, at American Falls, after he leaves the plant. Supposing, however, the man leaves the plant for down south and has got a full tank, and he leaves at 10:00 p. m. and approximately 2 or 2-1/2 hours later he arrives at Malad, which is approximately 65 miles from here. Would the company's policy still be opposed to allowing that truckdriver to stop at 12:30 or 1:00 o'clock in the morning for a cup of coffee?

The Witness: No, I think not. I wouldn't dis-

(Testimony of Captain Arch G. Webb.)

courage that at all. It merely tries to discourage excessive loitering along the way. Frequently the truckdrivers were in the habit to my knowledge of stopping along the way every half hour or hour, talking with the waitresses and killing time. To try to obviate that difficulty, sometime before I left, we purchased a number of service recording machines,—I believe that is what they call them; in any event, it was an appliance to attach to the truck and this apparatus would check the time that the employee stopped and the time that he was moving.

Trial Examiner Riemer: Thank you.

Redirect Examination (continued) [1130]

Q. (Mr. Merrill): Did those clocks work?

A. Very satisfactorily.

Q. When the employee, the driver, would loiter around as you have mentioned, would you have any knowledge as to what would happen as to the speed of the truck thereafter?

A. Definitely. They would try to make up the lost time by driving faster, increasing their speed on the highway, and the story would be told by the recording machine.

Mr. Merrill: I think that is all.

Trial Examiner Riemer: Well, as I gather from your testimony then, after the installation of the service recorders, the loitering along the road stopped?

The Witness: I don't know just what the effect

(Testimony of Captain Arch G. Webb.)

was. We were in the process of installing them on all trucks at the time I left. We had had them on most of the trucks, as I recall, by the time I left, but just what the results were subsequently to that time, I can't say. [1131]

WILLARD A. SHEPPARD

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please?

The Witness: Willard A. Sheppard.

Trial Examiner Riemer: How do you spell your last name, Mr. Sheppard?

The Witness: S-h-e-p-p-a-r-d (spelling).

Trial Examiner Riemer: Where do you live, Mr. Sheppard?

The Witness: Boise, Idaho.

Direct Examination

Q. (Mr. Moyle): Mr. Sheppard, what is your present occupation?

A. I am district manager of the Idaho Refining Company, and manager of the Idaho Gas & Oil Company.

Q. In what locality? A. Boise, Idaho.

Q. As manager of the Idaho Gas & Oil Company, you are restricted [1133] to the Boise, area?

(Testimony of Willard A. Sheppard.)

A. No, from Twin Falls, west.

Q. I see.

A. To, I would say, the Washington line.

Q. Now, when did you undertake that employment? A. December 20, 1940.

Trial Examiner Riemer: In both capacities?

The Witness: Yes, sir.

Q. Now, during the—since that period of time, have you maintained the same line of work?

A. Yes, sir.

Q. While thus engaged, I assume,—I will withdraw the question. Mr. Sheppard, were any minutes or records rather of the Idaho Gas & Oil,—were any minutes or records rather of the Idaho Refining Company Employees Benefit & Labor Association ever turned over to you?

A. No, sir; I never heard of the Association until in the court room here yesterday.

Q. Are you a member of it? A. No, sir.

Q. Never have been a member? A. No.

Q. What is the fact, then, as to whether or not you have ever received or seen any of the minutes or records of this Association? [1134]

A. I have never seen any.

Q. Now, you know Mr. Roy Williams, do you not? A. Yes, sir.

Q. Under what circumstances do you know him?

A. He was an employee of a company that we bought out, the Intermountain Oil Company, and at the time of the purchase, we also hired Roy as

(Testimony of Willard A. Sheppard.)

an employee of the Idaho Gas & Oil Company, and he worked for me until just recently.

Q. Is he still in the employ of the Idaho Gas & Oil Company? A. No, sir.

Q. When did he terminate his employment?

A. Well, I am not sure, but sometime in May, I think.

Q. What was his attitude towards you and the company at the time of the termination of his services, if you know?

A. Well, I have—I would say that he is very embittered towards the company and me and the rest of the employees.

Q. Do you know why? A. I have no idea.

Q. Where did you get that information of his attitude?

A. Well, from former employees, from service station operators, and from present employees.

Q. Now, did you have occasion to call him on the telephone on the 13th day of November, 1941, if you remember? A. I think so.

Q. And what was the substance of that telephone conversation? [1135]

A. Mr. Moyle had called me, as he had on several occasions previously, relative to obtaining transport drivers, and there were two men in particular who had had a great deal of experience in driving, in fact, they own their own transport, and I wanted to obtain the names of these men with the idea of sending them over to Pocatello.

Q. Who were these men?

(Testimony of Willard A. Sheppard.)

A. Well, I couldn't give you their names, even now.

Q. Were they then in the employ of the company?

A. No. They were,—they had operated this unit for hire.

Q. Now, what was the subject of your conversation over the telephone, if you had one, November 13, 1941, with Roy Williams?

A. I just merely called him and asked him if he knew the names of these two fellows, or of any experienced transport drivers that we could hire.

Q. And what did he say?

A. Well, he did tell me the names of these men then, but he didn't know how I could get in touch with them, and he didn't know of anyone else.

Q. Do you know the names that he gave you?

A. No, I wouldn't.

Q. Was there anything else said in that conversation? A. No, sir.

Q. Now, did he call at the office on November 14, that would be the next morning, 1941? [1136]

A. Yes, he reported to work.

Q. When he reported to work that morning, was there any conversation with him?

A. Well, nothing that I can recall other than our usual daily business.

Q. Did you discuss the engagement of any employees for truck driving purposes on the morning of the 14th of November, 1941, with Williams?

(Testimony of Willard A. Sheppard.)

A. Well, I probably did, because I was quite anxious to hire these men for Mr. Moyle.

He had told me in the telephone conversation the previous evening, that he was going to discharge all of our drivers, all of our transport drivers, and I knew that we had to have some men in Pocatello, quick.

Q. Did you have any conversation with Mr. Williams concerning drivers on November 16th, 1941? A. No, sir.

Q. Did you go out to Mr. Williams' house at any time during that period? A. No, sir.

Q. Do you recall whether or not you asked Roy Williams relative to whether or not Ray Pittman and a man by the name of Zollman had ever joined the union? A. No, sir.

Q. Did you or did you not ask him any such questions? [1137] A. No, sir.

Mr. Penfield: I know that I have been somewhat confused, and I think that the record is, as to whether the man's name is Zollman or Zollmer. Do you think that the witness can clear that up?

Mr. Merrill: I will try to.

Q. Do you know whether it is Zollmer or Zollman? A. It is Zollman.

Q. The name was Zollman? A. Yes, sir.

Q. I will ask you definitely, did you ask Williams, LeRoy Williams, whether or not Ray Pittman belonged to a labor union? A. No, sir.

Q. Did you ask Roy Williams whether or not Zollman belonged to a labor union?

(Testimony of Willard A. Sheppard.)

A. No, sir.

Q. Did you discuss with Roy Williams, labor union activities of any employees?

A. No, sir.

Q. Did Roy Williams say anything to you about the labor union membership of these two employees, or any other employees?

A. No, sir.

Q. Did you ever discuss with Williams, with Roy Williams, the subject of labor unionism?

A. No, sir. [1138]

Q. State whether or not—I will withdraw the question.

Did you ever *tell* Roy Williams that if Mr. Pittman and Mr. Zollman had joined a union that the company would have to let them go?

A. No, sir.

Q. And did you ever tell him that the company would use their accidents and particularly an accident of Zollman hitting a horse, as an excuse to let them go?

A. No, sir.

Q. Now, Mr. Sheppard, let me ask you again, was there ever any occasion during this period of time, or otherwise, or at all,—I will withdraw the question.

Was there ever any occasion during the period of November, 1941 or at any other time when you made any inquiry of Roy Williams touching any employee with respect to his membership in any labor organization?

A. No, sir.

Q. Was there ever any time when you asked

(Testimony of Willard A. Sheppard.)

Roy Williams to inquire of any employee whether or not he was a member of any labor union?

A. No, and I never asked any of the employees I hired. [1138A]

Q. Now, did you know a man by the name of Stanley Merrill? A. Yes, sir.

Q. Did you have any information touching a wreck that he had near Boise? A. Yes, sir. [1139]

Q. Tell us what you saw of the wreck, and the character of the highway, Mr. Sheppard, please?

A. The character of the highway itself was dry.

Q. Was it a straight road or a turn? [1140]

A. It was a curve, a very sharp, right-angle curve.

Q. And how did the wreck appear when you saw it?

A. The trailer was completely turned over and leaning up against a broken telephone pole. The truck itself was upright.

Q. Do you remember when that accident occurred? A. No, I don't.

Q. Do you know a man by the name of Wayne Douglas? A. Yes, sir.

Q. Did you know him about the 5th day of November, 1941 A. Yes, sir.

Q. No, it was,—did you know him on the 16th day of October, 1941? A. Yes, sir.

Q. Do you know what occurred at that time?

A. Well, if that is the date of this accident, I was in Hailey, Idaho, and Mr. Moyle, Mr. Gilbert

(Testimony of Willard A. Sheppard.)

Moyle telephoned me that there had been an accident in Weiser, with one of our transports, and he wanted me to get over there as quickly as I could.

Q. Did you go down to Weiser?

A. Yes, sir, I arrived there, I would say, between one and two o'clock in the morning.

Q. Did you see Douglas?

A. Yes, sir; one of the small boys had taken Mr. Douglas to the private residence of someone there, and I had him drive me out and got Wayne out of bed to inquire if he was injured. [1141]

Q. Did you discuss the accident with him?

A. Yes, sir.

Q. Did he tell you how it happened?

A. Yes, he told me.

Q. What did he say?

A. He told me that he had come across into Weiser,—which he was not supposed to do; in other words, it was off of the scheduled route, and had dinner at his sister's cafe, and that in attempting to make up for lost time he was driving too fast, and he said that he,—

Q. He told you this, did he?

A. Yes. He said he was going at least 40 miles an hour, was the way he answered me, and in attempting to make this turn, the transport turned over.

Q. Now, describe the appearance of the transport and the appearance of the wreck when you saw it?

A. Well, the transport was leaning against a

(Testimony of Willard A. Sheppard.)

tree, and the fire department was there; the police officers, they had roped the street off, and gasoline had been spilled all down an entire block. [1142]

Q. Mr. Sheppard, state whether or not you talked with Mrs. Stiff on the telephone on or about November 20, 1941, with reference to Wayne Douglas, in which you told her in substance or effect, for her husband to tell Wayne Douglas not to pull any more trips, and not to ask any questions?

A. No, sir.

Q. Under whose employ was Wayne Douglas at that time? Who had control of him?

A. Mr. Stiff,—Earl Stiff.

Q. You had nothing to do with his hiring or firing? A. No.

Q. I see. Mr. Sheppard, did you on or about November 16, 1941, while district manager of the Idaho Gas & Oil Company at Boise, Idaho, or at any other time,—

Mr. Penfield: I wonder if you would read that question, Mr. Reporter?

(Thereupon the question was read aloud by the reporter as hereinabove recorded.)

Trial Examiner Riemer: Let's hold it down to November 16, first, Mr. Moyle.

Mr. Moyle: All right, I will withdraw the question and reframe it. [1144]

Q. Mr. Sheppard, did you on or about November 16, 1941, while district manager of the Idaho Gas & Oil Company at Boise, Idaho, attempt to induce an employee of the Idaho Gas & Oil Company to report to the Idaho Refining Company

(Testimony of Willard A. Sheppard.)

whether truck drivers employed by the Idaho Refining Company at Boise were members of the Teamsters Union? A. No, sir.

Mr. Penfield: It seems to me that that question has already been asked and answered by the witness.

Trial Examiner Riemer: No, I think this involves testimony of another witness. It is concerned with the testimony of,—well, I am not sure, and since I am not sure, the objection is overruled.

Q. And did you advise an employee of the Idaho Gas & Oil Company at that time that employees who joined or belonged to the Teamsters Union would be discharged?

A. I never did discuss the unions or anything pertaining to them with any of the Idaho Gas & Oil Company or the Idaho Refining Company's employees at any time.

We had no trouble with unions over there; the subject was never mentioned.

Q. I see. Did you ever make any inquiry whenever a man was hired, as to whether or not he was a member of the union? A. No, sir.

Q. Was his hiring irrespective of that, or did it have anything further to do with it? [1145]

A. Never had anything to do with it. Whenever an applicant would come in, I would give him a form to fill out; in other words, an employment application form, for him to fill out in duplicate, and if I hired him as an employee, I would merely mail a copy of it into Pocatello and notify them that I had hired this particular employee. [1146]

No. 10583

United States
Circuit Court of Appeals
For the Fifth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME III
Pages 837 to 1080

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

FILED

JAN 19 1944

PAUL P. O'BRIEN,
CLERK

No. 10583

United States
Circuit Court of Appeals
For the Ninth Circuit.

NATIONAL LABOR RELATIONS BOARD,
Petitioner,
vs.

IDAHO REFINING COMPANY,
Respondent.

Transcript of Record
In Three Volumes
VOLUME III
Pages 837 to 1080

Upon Petition for Enforcement of an Order of the National
Labor Relations Board

EARL H. BROWN

a witness called by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: Will you state your name, please? [1152]

The Witness: Earl H. Brown.

Trial Examiner Riemer: Where do you live, Mr. Brown?

The Witness: Pocatello.

Trial Examiner Riemer: Thank you.

Direct Examination

Q. (Mr. Merrill) What is your present employment?

A. Mechanic for the Idaho Refining Company.

Q. How long have you been working as a mechanic for the Idaho Refining Company?

A. About 2-1/2 years.

Q. While thus working as a mechanic, did you know a man by the name of Archibald?

A. Yes, sir.

Q. Do you recall his first name? A. Leo.

[1153]

Q. During the period of time that you observed him working for the company, what was the regularity of his appearance for work?

A. Well, it seemed to me personally that he was a little slow for that kind of work, for that kind of job.

(Testimony of Earl H. Brown.)

Q. Had you ever observed him in any sense unnatural?

A. Well, I just don't know what you mean by that.

Q. Well, did he ever come to work when he was not able to work? A. Yes, sir.

Q. How many times, if you recall?

A. Oh, several times,—five or six times that I can recall, offhand.

Q. Now, when he did appear, at what time was that, usually, on what days?

A. Most generally the first of the week.

Q. When he did thus appear, what would he do?

A. Well, he didn't—he wasn't able to work. He would show up sometimes and wasn't able to work; he would get sick and have to lay off, or go outside, or something, and he wasn't able to get down on a truck, or under a truck and work.

Q. How often did that occur, or have you so testified?

A. Well, I have known three or four times, anyway, or more, where he has had to take off, that he couldn't go to work.

Q. Did you ever talk to him about his condition?

A. Yes, sir. [1155]

Q. What did he say that his trouble was?

A. Well, he was,—he had been working too hard and had been out a little late; he was sick.

Q. Now, was any complaint made—I will withdraw the question. Do you know Kermit Rice?

(Testimony of Earl H. Brown.)

A. Yes, sir.

Q. Who was Kermit Rice?

A. He is my foreman.

Q. And was any complaint made to him touching the attitude or conduct of Archibald?

A. Yes, sir.

Q. Did you ever make any comment to Rice about him? A. Yes, sir.

Q. In what respect?

A. That he would do those things, and come to work in a condition where he couldn't go to work, and I would have to stay and do the work on account of him not being able to work, and I would have to come back nights to do it, because we were shorthanded by him laying off, and he finally was too slow to keep up his end of it, the way I looked at it, and I mentioned it to Mr. Rice a time or two.

Q. Was there any comment made by you with respect to his discharge? A. No, sir.

Q. Now, do you recall an occasion when Mr. Rice was on his [1156] vacation, I believe that he went back to New York, that was in July, of 1941?

A. He went back after a truck, yes, sir.

Q. And who had charge of the shop at that time? A. I did.

Q. Did you observe anything unusual with Archibald at that time?

A. Well, he did too much celebrating on the Fourth and couldn't work for three or four days.

(Testimony of Earl H. Brown.)

Q. And who did his work when he was thus off? A. I did.

Q. Did you make any comment to Archibald about his absence? A. I did.

Q. What did he say, if anything?

A. We had one other fellow working with us, and they made arrangements during the Fourth of July that one of the fellows was to take off three or four days, and Archibald was going to take off the Fourth, and they was to come back to work. I was working straight through, and instead, neither one came back. One fellow came back in three days, which he was supposed to take, and Archibald took three days, and the next day he came back and was not able to work.

Q. Did you call this to Archibald's attention?

A. I told him of the condition of the equipment that we had down, and I was alone, but he couldn't work. He went home that [1157] forenoon.

Q. Did you comment upon him—upon his drinking habits?

A. Well, I believe as nearly as I can recall now, that I told him that he probably wouldn't be there long when the boss came back, if he knew about the condition of things—something to that effect.

Q. What did he say, if anything?

A. I believe that he told me he would try and come back at noon, but as nearly as I recall, he didn't come back until the next day. He was off four days that one time.

(Testimony of Earl H. Brown.)

Q. Did he ever ask you to drink with him?

A. Yes, sir.

Q. And have you done so? A. No, sir.

Q. Was that on more than one occasion?

A. He never did there at the shop. He asked me uptown, and over at his home.

Q. Do you recall an instance when he spent the major portion of a day sitting in an automobile?

A. When he was sick, yes, sir.

Q. When was that, if you know?

A. He came to work one morning, and he was,—he had been around the place for a while and he went out and sat in a car. I don't remember whose car it was. It was parked outside of the lot.

Q. Did he say why he was out there? [1158]

A. He was sick at his stomach.

Q. Did you go out to hunt for him?

A. I did.

Q. Did you know where he was before you left the garage to look for him?

A. No, sir. I knew that he went outside, but I didn't know where he had gone to.

Q. What did you go outside for?

A. I went outside to see if he couldn't get in shape to come back to work.

Q. Where did you find him?

A. In this car.

Q. Did you know where he was when you left to look for him? A. No, sir.

Q. Did you talk to him when he was in the car? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. What did he say?

A. I asked him how he was feeling, and if he could come back to work, that we was getting swamped and had to have some help.

Q. And what did he say?

A. That he couldn't go back to work; he was too sick.

Q. How long did he stay in the car?

A. I believe most of the day.

It was along in the afternoon—I don't know when he left or whether anybody took him home. I don't recall that he came [1159] to work at all.

Q. That day?

A. I don't believe that he came in the shop at all.

Q. Do you recall the time at the Refining Company's plant when Mr. Archibald was discharged?

A. I wasn't there right at that time. I came out,——

Q. Do you recall the day?

A. No, I don't. I don't know what date it was.

Q. What month was it? A. I don't recall.

Q. Was it in November, if you know?

A. It must have been along in the fall of the year, early in the fall.

Q. Now, do you recall during the early part of the week of his discharge, whether or not he had been absent from his work? A. Yes, sir.

Q. And what was it for? Had he been absent, and if so, how long, and when?

(Testimony of Earl H. Brown.)

A. It seems to me that we was supposed to work Sunday, and he didn't show up Sunday or Monday?

Q. Did he show up on Tuesday?

A. It seems to me that he was off two days, and I don't know whether it was Sunday and Monday, or Monday and Tuesday. It seems to me that it was Sunday and Monday that he didn't show up.

Q. What was the condition of the work in the shop at that time? [1160]

A. Well, we most generally had all that we could handle with the three of us. We was always busy in the shop.

Q. Did he make any comment to you then as to why he had missed those days?

A. No, sir; not that I recall.

Q. Had Mr. Archibald ever said anything to you about being a member of a labor union?

A. No, sir.

Q. Did you know whether or not he was a member of any labor union? A. No, sir.

Q. Had that matter ever been discussed between you and Mr. Archibald? A. No, sir.

Q. Had his membership in any labor union organization ever been discussed by you or anyone else? A. Not that I ever recall.

Q. Did you know whether or not he was a member of any union? A. I did not.

Q. And you worked right alongside of him during the entire summer? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. Now, when there is work done in one of these tanks or transports, what arrangements are previously—what preparations is previously made for the men working in them? [1161]

A. When they go in to weld them, you mean?

Q. Yes.

A. They put them on steam and steam them out, and then they have an analysis to see if there is any poisonous gas or anything in them before starting work in them. Then they put them in the garage and put a blower in them to blow the fumes out. We had a portable blower then. We have different kinds now. At that time, we had a portable blower, and it blew the fumes and smoke and everything out, and keep the air circulating.

Q. Was that blower that blew the fumes out in use at the time Archibald began service with the company?

A. Yes, sir.

Q. And continued during the entire period of time that he was there?

A. Yes, sir.

Q. And with that arrangement, what is the fact as to whether or not there could be any fumes that would effect a man?

Mr. Penfield: I object to that as calling for a conclusion.

Trial Examiner Riemer: It is obviously a conclusion, but I will permit it to be answered. Read the question to him, Mr. Reporter.

(Question thereupon read aloud by the reporter as hereinabove recorded.)

(Testimony of Earl H. Brown.)

A. There is always smoke fumes from the welding rod, regardless of where you are, but working under a blower, your conditions are [1162] really better than there are at any other time because it is blowing them out and circulating the air.

Q. Have you ever worked in the tanks?

A. Yes, sir; I have been in them and worked with them. I am not a welder.

Q. What work do you do?

A. Help them, maybe cutting out a patch, something like that.

Q. Did you work alongside of the welder?

A. Yes, sir.

Q. At the same time that he was working?

A. Yes, sir.

Q. Did any fumes annoy or affect you?

A. No, sir.

Mr. Merrill: I believe that is all.

Trial Examiner Riemer: Mr. Penfield, you may cross examine.

Cross Examination

Q. (Mr. Penfield) How many mechanics did you have at the time that Mr. Archibald worked there? A. There was three.

Q. That is including yourself?

A. Yes, sir.

Q. Who was the other one? A. Sir?

Q. Who was the other one?

A. Bud Boyer. [1163]

Q. Was he there during the entire time that Mr. Archibald worked there?

(Testimony of Earl H. Brown.)

A. No, he didn't come until after Mr. Archibald did, for a while; I don't remember just how long.

Q. Do you know Oran Thomas?

A. Oran Thomas, yes, sir.

Q. Did he work there? A. Yes, sir.

Q. Is he a mechanic? A. Yes, sir.

Q. When did he come? I want to straighten that up.

A. It seems to me like along in the middle of the summer, along in August.

Q. Did Boyer leave then?

A. I believe that Boyer had gone before that.

Q. I see.

A. Mr. Archibald was there, and Thomas and myself and then after Boyer left, but I don't know how long—the date.

Q. Was the work pretty steady?

A. Yes, sir.

Q. You don't have periods where you don't have much work? A. Never have had.

Q. When did you first observe Mr. Archibald was not reporting to work, as you testified?

A. Well, he would lay off at different times and say that he [1164] was sick, but I didn't know—

Q. When was this? How long after he came to work there?

A. A couple or three months after he started to work, but I didn't know why, or what; as I say, I was never out with him.

(Testimony of Earl H. Brown.)

Q. So far as you know, he was actually sick, was he?

A. He was sick out there some mornings, yes, sir.

Trial Examiner Riemer: There seems to be a delicacy on the part of both counsel to avoid mentioning the word "liquor" or the condition of drunkenness. I wish that you would avoid any nicety about it. Let's break it down and find out now, whether the man was sick from some other cause, or just drunk.

Q. (Mr. Penfield, continuing) Well, you testified that on a number of occasions, he reported to work and he was sick? A. Yes, sir.

Q. Was he sick or drunk, if you know?

A. I don't know what would cause it. I couldn't say.

Q. I asked the question——

A. I couldn't answer it that way, because I never saw the man take a drink, and I don't know what you would call a drunk man. If a man is able to walk when he was drunk, he was able to walk on the job.

Q. Was he drunk or wasn't he? Or was he sick, do you know?

A. I would say that he had been drinking.

Q. You don't actually know, then?

A. I don't actually know whether it is what you would term as [1165] drunk.

Q. You knew, as a matter of fact, that he was

(Testimony of Earl H. Brown.)

suffering, had been under treatment for ulcers for some time, did you not?

A. No, sir; he never told me that.

Q. You stated that he complained he had been working too hard, did you not? A. Yes, sir.

Q. He did work pretty hard, didn't he?

A. He did at first, yes, sir.

Q. Did you not work pretty long hours out there? A. Yes, sir.

Q. All the way through his employment, didn't Mr. Archibald work pretty steadily, except for these few occasions when he was sick or drinking, you don't know which?

A. He worked all day, yes.

Q. And he would work longer than that, sometimes, wouldn't he?

A. He got so he wouldn't take on any more of that.

Q. Do you know the hours that Mr. Archibald worked during the time that he worked there?

A. Not altogether, no, sir.

Q. You have no idea how many hours he put in during each payroll period, is that right?

A. No, sir. I never kept track of the time.

Q. Would you say that it is not true that Mr. Archibald [1166] average 9-1/2 hours during the period he worked there?

Trial Examiner Riemer: Don't answer the question, Mr. Witness.

Mr. Merrill: Objected to as——

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: Just reframe the question. You have a double negative in there.

Mr. Penfield: All right.

Q. (Mr. Penfield, continuing) Isn't it possible, Mr. Archibald could have worked an average of 9-1/2 hours a day on a 7-day week during the period he worked there? A. Yes, sir. [1167]

Q. Was there any—you say that your work is pretty steady. Did it continue steady after November the 14th? A. Yes, sir.

Q. After Mr.—did you get a new mechanic after Mr. Archibald was discharged?

A. We had this Mr. Thomas who came before that. We have had two mechanics since then, two men. [1170]

Redirect Examination

By Mr. Merrill:

Q. Mr. Brown, did Mr. Archibald work any longer hours than any other employee there?

A. No, sir.

Q. Did he work any longer than you did?

A. No, sir.

Q. Did he work as long? A. No, sir.

Q. Did he work as long as Mr. Thomas worked?

A. No, sir.

Q. And as I understand, in all instances, where he worked over his 40 hours a week, he got time and a half for overtime? A. Yes, sir.

Q. Did you ever observe Mr. Archibald's welding operations? A. Yes, sir.

(Testimony of Earl H. Brown.)

Q. Did you ever see him burn a hole through a tank? A. Yes, sir.

Q. Explain that situation.

A. Well, I had worked that day and came back out in the evening and he had been called to come out to weld a tank, and he get [1172] in the tank and he burned a hole, a long place in this tank when he started to weld it. I didn't know who was in the tank or anything about it at the time, but I saw the hole come in the tank, and saw the stinger come out through there, and later, the shop foremen went up and stopped him and told him to come out, and they would let it go at the time, and after he left, the shop foreman went in and welded the tank.

Q. Welded the hole that he had made?

A. Yes, sir; and the others, he didn't get done at the time. I didn't pay no attention to it at the time until after they welded the tank up. He wasn't in very good shape the night he came out.

Q. You mean that he was apparently under the influence of liquor? A. Yes, sir.

Trial Examiner Riemer: Is that what you mean?

The Witness: Yes, sir.

Mr. Merrill: I believe that is all.

Recross Examination

By Mr. Penfield:

Q. When was the occasion, the day that he burned the hole in the tank?

A. Well, it was in the evening. I don't know the day.

(Testimony of Earl H. Brown.)

Q. About what date?

A. About what date?

Q. Yes. [1173]

A. Well, I couldn't say because we do that stuff over and over again so much and I really didn't pay attention to the date, or anything like that.

Q. Did you talk with Mr. Archibald that night?

A. Just for a minute when he came out, when he got out of the tank. He said that he was going to take off.

Q. You don't know whether he was drunk or not, do you?

A. He wasn't in very good shape. I would say that he had been drinking.

Q. How did you know?

A. I could tell by the looks of his face that he had been drinking, or there was something else wrong with him.

Q. Something might have been wrong with him.

Mr. Penfield: I believe that is all.

Trial Examiner Riemer: Is there anything further?

Mr. Merrill: That is all.

Trial Examiner Riemer: Mr. Brown, during the period between January and November of 1941,—that covers almost 12 months,—did you have occasion during that time to work on Sundays?

The Witness: To work on Sundays?

Trial Examiner Riemer: That is right.

The Witness: Yes, sir.

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: How frequently did you work on Sunday? [1174]

The Witness: Well, we was to take turnabout. We tried to work every other Sunday.

Trial Examiner Riemer: During the course of an average month, which has four weeks, how many Sundays would you work?

The Witness: Well, we wouldn't work all day. We would just go out when we had to for maybe two hours or one hour, or sometimes four hours.

Trial Examiner Riemer: How many Sundays during the month would you go out for that short shift?

The Witness: Oh, I would say two.

Trial Examiner Riemer: Had you any idea—I will give you a moment to think about it—how many days, including Sundays, you were off between January and November of 1941?

I will show you a calendar.

The Witness: How many days I was off?

Trial Examiner Riemer: That is right.

The Witness: No, I wouldn't know. I was off two weeks on a vacation.

Trial Examiner Riemer: Let's not include that.

The Witness: Well, I would be off different times when I would get overtime enough in. I would be tired and I would lay off for a day. If work was slack in the middle of the week, I would take a day off.

Trial Examiner: When you accumulated over-

(Testimony of Earl H. Brown.)

time and you were tired, did you secure permission before you laid off? [1175]

A. That was understood, if we had our over-time in, our full week in, we didn't have to, it wasn't necessary for us to come back.

Trial Examiner Riemer: Did you ever combine that day with a Sunday to get two days together?

The Witness: Yes, sir.

Trial Examiner Riemer: Would you say that you did not work—wouldn't report at all for work on at least two Sundays out of every month?

The Witness: I believe that I would average something like that.

Trial Examiner Riemer: So that between—strike that, Mr. Reporter. Did you work any more frequently on Sunday than Mr. Archibald did?

The Witness: Yes, sir.

Trial Examiner Riemer: How about Thomas, after he came on the job, Oran Thomas?

The Witness: Well, if you don't mind me stating on this: I had been there longer than these other fellows, Mr. Archibald and the other fellows, and knew the equipment better, and naturally, on over hours or Sundays, they would call me, because I knew what it was; and take a new man, it would take him longer because he would have to find out what was wrong on some occasions, not all of them—not that one man is better than another, but I had been there longer and knew what would break on them. [1176]

(Testimony of Earl H. Brown.)

Trial Examiner Riemer: Does that account for the fact that you worked more frequently on Sundays?

The Witness: Yes, sir.

Trial Examiner Riemer: And because of the fact that you had had more experience, and were more familiar with the equipment?

The Witness: That is it.

Trial Examiner Riemer: You could exercise greater judgment and discretion due to your familiarity?

The Witness: I was more familiar with it, yes, sir. I had been there longer, and had been through the motors more. [1177]

RESPONDENT'S EXHIBIT No. 6

IDAHO REFINING COMPANY

Condensed Balance Sheet—As of October 31, 1941

Assets:

Cash on hand and in bank	
(overdraft)	\$ 312.17*
Receivable Items, Net after reserves	261,435.52
Merchandise Inventories on Hand	137,048.59
<hr/>	
Total Current Assets.....	\$ 398,171.94
Receivables Due after One Year.....	326,150.00
Prepaid Expenses and Other Deferred Charges	92,167.90
Fixed Assets, Net After Reserves.....	596,373.67
<hr/>	
Total Assets	<u><u>\$ 1,412,863.51</u></u>

Liabilities and Capital :

Notes and Trade Acceptances

Payable	\$291,901.20
Accounts and Contracts Payable....	290,439.52
Accrued Taxes Payable	85,313.84
Accrued Payroll Payable	7,929.34
Accrued Interest and other payable items	4,659.54

Total Current Liabilities\$ 680,243.44

Notes Payable not due until after

one year\$ 93,365.57

Contracts Payable—Portion Due

After one Year 2,717.05

Total Liabilities Due After One Year..... 96,082.62

Capital Stock Subscribed and

Outstanding\$595,480.00

Surplus 41,057.45

Capital and Surplus 636,537.45

Total Liabilities and Capital\$ 1,412,863.51

* Figures in red.

HARRISON JONES

previously sworn as a witness by and on behalf of
Respondent, was recalled and further testified as
follows:

Trial Examiner Riemer: You are the Harrison
Jones who has been previously sworn, identified
and interrogated as a witness by the respondent?

[1182]

The Witness: Yes.

(Testimony of Harrison Jones.)

Direct Examination

By Mr. McKay:

Q. You are an employee of the Covey Gas & Oil Company? A. Yes.

Q. What is your position?

A. I have charge of the accounting of the Covey Gas & Oil.

Q. Where are your offices?

A. At the Refinery.

Q. Will you state where your office is in relation to the office of the employees of the Idaho Refining Company?

A. Well, the building is an "L" shaped building, and a wing on the back, and our office is in the extreme end of the "L" and the refinery office is in front. There is a wall between.

Q. Do you know the mechanics of the discount given by the Covey Gas & Oil Company to purchasers of gasoline? A. Yes.

Q. Will you tell us how that is handled?

A. Well, anyone working for the Idaho Refining Company is entitled to a discount providing the purchase is made at our Covey station in Pocatello, and they make the purchases and we record them and set up ledger sheets for each individual during the month, and twice a month, we make a list of the employee's purchases and give to the refinery. [1183]

VALERIE PRIMBS

called as a witness by and on behalf of the Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: Valerie Primbs.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Direct Examination

By Mr. McKay:

Q. You are an employee of the Idaho Refining Company, Miss Primbs? A. Yes.

Q. What is your specific duty?

A. I am office clerk.

Q. You have charge of the payroll records?

A. Yes.

Q. And you make out the checks each time that they are made out? A. Yes. [1188]

Q. I show you Board's Exhibit No. 20, and ask you whether you see at the top of that several columns under the word "Deductions"?

A. Yes.

Q. Now, under the column which is marked "EBA", do you know what you put under there, or where you got the information which you put down there?

A. Deductions are given to me by the secretary or treasurer, I don't know which he is, of the Association. He gives me the list.

Q. And the figures that you put under the column marked "Purchases"?

(Testimony of Valerie Primbs.)

A. That is gasoline deductions for gas, oil and tires.

Q. Where do you get that information?

A. From the Covey Gas & Oil Company. They give me the list.

Q. Is there any deduction for gasoline, oil and tires placed under column marked "EBA"?

A. No.

Q. Did you make out the checks for the drivers who were discharged? Did you make out any checks on November 14?

A. Yes.

Q. Do you remember what time of the day you started making out those checks?

A. As soon as I got to work in the morning.

Q. What time did you get to work in the morning? [1189]

A. Eight o'clock.

Q. I will ask you to look at certain cards marked individual labor tickets, Idaho Refining Company, Respondent's proposed exhibit No. 7, and state on what days Wayne Douglas was working as shown by those cards?

A. October 2, 5, 6, 7, 15, 29, and 30th.

November 1, 2, 3, 5, 6, 7, 9, 10, 11, 14 and 15.

Q. I will ask you whether those cards show all the days on which Wayne Douglas worked between October 2 and November 15?

A. Yes.

Q. As shown by all the payroll records in your office?

A. Yes, between October and November 15th.

Mr. McKay: That is all.

(Testimony of Valerie Primbs.)

Cross Examination

By Mr. Penfield:

Q. Do I understand that you were the payroll clerk for the Idaho Refining Company?

A. Yes.

Q. How long have you held that position?

A. Around three years.

Q. I show you Board's Exhibit 16-A, and ask you if this is a typical sheet which you receive twice a month from the secretary of the Association?

A. Yes, it is.

Q. You receive those twice a month, do you not?

A. Yes. [1190]

Q. Then what do you do?

A. I enter these on their time sheets and make the deductions from their checks at the refinery.

Q. What do you enter, do you enter the amount of the total?

A. The total amount.

Q. On the time sheets of each of the individuals named?

A. Yes.

Q. When are you given these sheets, normally?

A. Just before each pay period.

Q. What are your pay periods?

A. The pay periods end on the 15th and the last day of the month, and that is when I get the deductions, right after the pay periods.

Q. And the actual checks are given on the 5th and 20th?

A. 5th and 20th.

Q. And you work on these during the time in between?

A. Yes.

(Testimony of Valerie Primbs.)

Q. About how much time do you spend on each one of those sheets? A. On each sheet?

Q. Well, I mean to say, you get them twice a month, the whole thing, and about how long does it take to make these entries?

A. To enter these deductions on the time sheets, just a matter of a few minutes.

Q. How do you do it? [1191]

A. I take the amounts from these sheets and put them on each individual's payroll sheet—time sheet.

Q. What sort of sheets do they have?

A. They are records of the hours they worked each day of the period.

Q. Do you copy that down with a machine?

A. No, it is all done by hand.

Q. You just copy off the names? A. Yes.

Q. What do you mean by a few minutes, you have to copy down all of those?

A. Well, five or ten minutes to enter these deductions.

Q. For sixty or seventy people?

A. Eighty—around there.

Q. Eighty people. What are these parts that you have in your hand marked as Respondent's Exhibit 7 for identification?

A. They are the individual labor tickets for each day.

Q. Now, who makes these out?

A. The person doing the work, and they are okehed.

(Testimony of Valerie Primbs.)

Trial Examiner Riemer: You mean the employee?

The Witness: The employee.

Q. (Mr. Penfield, continuing): The truck driver, in the case of Wayne Douglas?

A. The truck driver.

Q. Who are they given to? [1192]

A. They are given to the foreman, the fellow in charge of the truckdrivers.

Q. Then when do you receive them?

A. The foreman gives them to me.

Q. In the case of Mr. Stiff, how was that handled?

A. Mr. Stiff sent them in to the office, and then they were handed to me later.

Q. I believe that you testified that there were cards up to the 15th of November? A. Yes.

Q. Isn't this a card for the 16th of November?

A. I started there, and I was interrupted, and he only asked me through the 15th.

Q. But this is a card for the 16th? A. Yes.

Q. And this one for the 17th? A. Yes.

Q. And this one for the 18th? A. Yes.

Q. And this one for the 19th? A. Yes.

Q. And this one for the 20th? A. Yes.

Q. So Mr. Douglas worked through the 20th as far as these cards show, is that correct? [1193]

A. Yes.

Mr. Penfield: I believe that is all.

(Testimony of Valerie Primbs.)

Redirect Examination

By Mr. McKay:

Q. I didn't mean to interrupt you, I thought that you had finished? A. No.

Q. What was the last day that Mr. Douglas worked, as shown by the cards?

A. I believe that it was the 20th. Do you have the cards, and I will tell you? November 20.

Q. What day was Mr. Douglas paid?

A. What was that?

Q. What day was he paid?

A. I wouldn't know without looking at the records.

Q. The cards don't show that? A. No.

Mr. Penfield: Counsel, do you mean ordinarily paid, or the last time that he was paid?

Mr. McKay: The last time that he was paid. That is all.

Trial Examiner Riemer: Mr. Penfield?

Mr. Penfield: No further questions.

Trial Examiner Riemer: The witness is excused.

Mr. McKay: We are not offering those cards unless you want them.

(The cards referred to, which have [1194] heretofore been identified as Respondent's Exhibit 7 for identification, were not offered and were left in the custody of the witness.)

Mr. Merrill: I will call Kermit Rice.

(Witness excused.)

KERMIT RICE

was thereupon called as a witness by and on behalf of Respondent and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: Kermit Rice.

Trial Examiner Riemer: Where do you live?

The Witness: Pocatello.

Direct Examination

By Mr. Merrill:

Q. What is your present occupation, Mr. Rice?

A. Superintendent of transportation.

Q. For whom are you working?

A. Idaho Refining Company.

Q. How long have you been working for the Idaho Refining Company?

A. I believe that it was September 7, 1938.

Q. Where did you live prior to that time?

A. Pocatello.

Q. You have lived in Pocatello for how long, approximately?

A. Since 1935, sometime around there.

Q. When you commenced working for the Idaho Refining Company [1195] was it at its plant here at Pocatello?

A. Yes.

Q. Have your services for the Idaho Refining Company been continuously here in Pocatello?

A. Yes, sir.

Q. What was your position when you first commenced working?

(Testimony of Kermit Rice.)

A. Well, I did mechanical work on the trucks, and I did the hiring and firing of the drivers.

Q. Drivers of what?

A. Of the transports of the Idaho Refining Company.

Q. In the beginning, this was a very small shop, I believe? A. Yes.

Q. How many trucks did the company have to begin with? A. Four.

Q. How many does it have now? I mean transport trucks that haul gasoline out along the road out of the refinery?

A. You mean the tank units?

Q. Well, do you have trucks in addition to what you call the tank units, I mean that haul gasoline from the refining plant to stations?

A. Well, I did have a spare or two.

Q. Well, do you have one now?

A. Well, no, not all of them. We have—I believe it is 16 trucks and trailers.

Trial Examiner Riemer: 16? [1196]

The Witness: Yes, sir.

Q. (Mr. Merrill, continuing) What percentage of those are in use?

A. Well, all of those tanks are used.

Q. How many tanks do you have now?

A. You mean semi-trailers and full trailers and trucks and trailers?

Q. Yes.

A. I believe that is 16.

Q. Now, are you a mechanic yourself?

(Testimony of Kermit Rice.)

A. I worked at it for a number of years, yes, sir.

Q. Belong to a labor union? A. Yes, sir.

Q. What union?

A. It is the international Association of Machinists.

Q. What number Local?

A. I don't recall what Local it is. I have a Journeyman's retirement card.

Q. Is it located here in Pocatello? A. Yes.

Q. Have you had any actual activities here in Pocatello with the Union of which you were a member? A. Yes, sir.

Q. What?

A. Well, I was a member for a long time.

Q. A charter member? A. Yes, sir. [1197]

Q. Assisted in its organization?

A. Yes, sir.

Q. And have maintained the status of a member ever since? A. Yes.

Q. Does the Idaho Refining Company maintain a garage or work shop on its property here near Pocatello? A. Yes, sir. [1198]

Q. Now, do you know a man by the name of Leo Archibald? A. Yes, sir.

Q. When did you first become acquainted with him?

A. I hired him some time in January, I believe it was, in 1941.

Q. And in what capacity did he work?

A. As a truck mechanic.

Q. Did he have anything to do with welding?

(Testimony of Kermit Rice.)

A. Yes, sir.

Q. What part of his time during the period of time he worked for you was devoted to welding, and what parts to other mechanical work if you can segregate it?

A. Well, there were some days he never did do any welding at all. [1200]

Q. Was welding a major or minor part of his service?

A. Well, welding was, you might say, a minor part of the service that had to be taken care of.

Q. When there was no welding to do, then you mean that he was doing other things?

A. Yes.

Q. In a mechanical way?

A. Yes, sir.

Q. Now, will you advise the character of the work he did and his general attitude towards his work?

A. Well, when he first came to work for me, he started out—worked pretty well—that is what I mean—he did his work well and he was fast. That is, he wasn't especially fast,—he did a good job. But as time went along, he got slower every day we went along, it seemed to me as though.

Q. Did you ever have reason to criticize his work?

A. Yes, sir.

Q. Advise us, please.

A. Well, there were numerous occasions I told him that he would have to hurry up, that we had to get the trucks out, and get them out on the road.

Q. Why did you tell him that?

(Testimony of Kermit Rice.)

A. Well, he was so slow—he got to be so slow.

Q. Did he make any comment to that?

A. Sometimes he did. [1201]

Q. Do you recall any reason that he gave for being slow? A. No, sir.

Q. What have you to say as regards his habits as to whether or not he would appear on the work under the influence of intoxicating liquor?

A. Well, I understood he had quite a bad habit of drinking.

Q. Had you observed him on the job when he was under the influence of intoxicating liquor?

A. Well, I saw him once when he couldn't hardly get out of the shop—the door. It is 15 feet wide.

Q. Was he drunk or not at that time, in your opinion?

A. In my opinion, he was under the influence of liquor.

Q. When was that?

A. It was sometime in June.

Q. What time did he come to work that day?

A. He had come in the morning to work.

Q. How long did he remain?

A. Well, he went home about five o'clock; then I called him back.

Q. That day? A. That evening.

Q. Did he work all day drunk? A. No, sir.

Q. I am directing your attention to the day you said you saw him when he was under the influence of liquor so that he could [1202] hardly get out the door; what day was that?

(Testimony of Kermit Rice.)

A. That was the night that he burned the hole in the tank for me.

Q. Do you remember the time?

A. You mean that he was out there?

Q. The day that you say that he was drunk as you have described, what date was that, Mr. Rice?

A. Well, as to the exact date, I am not positive. It was sometime in June, 1941.

Q. All right. Describe him a little more fully that day, and what he did, what he said, and what you said to him.

A. Well, this trailer had been steamed and was in the shop under the blower, and he had gone home, and I called him back out to weld it.

Q. What time did he come back out?

A. I wasn't there when he got there. I had gone home to supper, when he got there; but when I came back, he was in this tank, working on it, and had burned this hole, burned this hole through the floor of it.

Q. Whereabouts was the hole burned with reference to where he would he would have been working with his torch?

A. It was about four inches from where he should have been welding.

Q. What kind of a hole was it that was burned in the tank?

A. Just a small, jagged hole about $\frac{3}{8}$ of an inch in diameter. [1203]

(Testimony of Kermit Rice.)

Q. What was the cause of the hole being burned, if you know, was it deliberate or careless, or what?

A. Well, it was from pulling his arc too long an arc away from his weld.

Q. Did you call his attention to it?

A. Yes, sir.

Q. What did you say to him?

A. I told him after he had got out of the tank that I couldn't stand for any more of that kind of work at all, and if he ever came out there again under the influence of intoxicating liquor, he would be—I would be forced to let him go.

Q. What did he say?

A. I don't believe that he said anything at all.

Q. Did he leave then for home that night?

A. Yes, sir.

Q. What did you do then?

A. I welded the tank back in.

Q. How long did it take you to repair that hole?

A. Oh, to repair the hole he burned in there, didn't take probably over 15 or 20 minutes.

Q. What other work did you have to do that he should have done?

A. I had to cut all of his old weld out of the bottom of the tank and replace it.

Q. Why?

A. It still leaked where he welded it. [1204]

Q. That was due to what cause?

A. Not holding a steady arc in there, or flowing the metal in even.

(Testimony of Kermit Rice.)

Q. Now, at that time, were there any fumes in the tank that were obnoxious to you?

A. There were no fumes in there when I was in there.

Q. How was that tank handled to prevent fumes?

A. You mean from the electrodes?

Q. Well, any kind of fumes?

A. Well, the tank had been steamed previous to the time that it was put under this blower.

Q. When was the blower installed for use in tanks in the plant with reference to Archibald's work?

A. Clifford Neff and I built it sometime in 1939.

Q. That was before Archibald came?

A. Yes, sir.

Q. What is the fact as to whether or not there was a blower to eliminate the fumes during all the period of time that Archibald was there, or only a part?

A. The blower was always there.

Q. What other instances do you recall of Archibald coming to work off time or under the influence of liquor?

A. Well, there was one morning when I missed him, and I never did know where he was until I went home that night, and he had been sitting in the car outside the fence all day. [1205]

Q. How did you learn that he had been doing that?

A. I happened to see him when I went home.

Q. Did you say anything to him?

A. No, sir; not that night.

(Testimony of Kermit Rice.)

Q. What was the fact, had he been missed all day?
A. Yes, I didn't know where he was.

Q. Did you see him come to work that morning?
A. Yes.

Q. Did you observe anything unusual with him?

A. Well, he looked like he had been out all night.

Q. Did you say anything to him?

A. No, sir.

Q. Now, what other instance of dereliction did you observe with him?

A. Well, there was one day just before I let him go that he was—said he had been—said that he had the bellyache—he came to work.

Q. When was that, if you remember?

A. That was the Monday before I let him go.

Q. How long was he off work then?

A. He was off work that day, and I don't believe that he worked the day before that. That was on a Sunday—Sunday and Monday, I don't believe he worked. He didn't work either of those days.

Q. Did you criticize him? [1206]

A. Yes, sir.

Q. What did you say to him?

A. I told him that I just couldn't stand that kind of carryings on any more at all.

Q. What did he say?

A. I don't recall whether he said anything or not—he——

Trial Examiner Riemer: Excuse me for interrupting. What day was Archibald discharged?

Mr. Merrill: On the 13th.

(Testimony of Kermit Rice.)

Mr. Leicht: The 14th.

Mr. Merrill: The 13th was the last day that he worked.

Mr. Leicht: Yes, the 13th was the last day he worked. He was discharged at 8:00 o'clock on the morning of November 14, 1941.

Trial Examiner Riemer: Thursday was the 13th. Friday he was at work?

Mr. Leicht: He came to work on Friday and never started to work.

Mr. Merrill: I assume so.

Q. (Mr. Merrill, continuing): Do you know the day of the week that he worked last?

A. The day of the week?

Q. Yes.

Trial Examiner Riemer: Here is a calendar, Mr. Rice.

A. You want to know the day of the week that he worked last? [1207]

Mr. Merrill: Yes.

A. The last day that he worked would be the 13th of November.

Q. (Mr. Merrill, continuing): What day, Friday, Wednesday, or what?

A. It would be Thursday.

Q. Now, did he work Monday and Tuesday of that week? A. He did not work Monday.

Q. Do you know whether he worked Tuesday?

A. I believe he did.

Q. Yes. Now, I want you to go back a little bit;

(Testimony of Kermit Rice.)

do you remember the incident when you went back to New York or back East to get a truck?

A. Yes.

Q. Who looked after the work that you had previously been doing, when you were gone?

A. Mr. Earl Brown.

Q. When you got back, was there any report made to you as to the conduct of Archibald?

A. Yes.

Q. What was the report, and by whom was it made?

A. Mr. Brown told me that he had came out there after the Fourth of July and was unable to work and from his observation that he was under the influence of liquor.

Q. Did Mr. Brown say anything else as to what should be done—any corrective measures? [1208]

A. Not to me, I don't believe that he did.

Q. Now, there are other instances of dereliction on Archibald's part—I mean lack of doing his work right or reporting to work?

A. Well, he got awfully slow—it would take him six hours to do a two-hour welding job.

Q. When did that occur?

A. That was several times on tank jobs.

Q. Did he get worse as time went on in that respect?

A. Yes, sir.

Q. What was his method of doing his work towards the latter part of October and November?

A. Well, I would put him on a job and he would just stay there as long as he possibly could.

(Testimony of Kermit Rice.)

Q. Did you criticize him in any way?

A. Yes.

Q. What did you tell him?

A. I told him that he was too slow, and that he had to whip up.

Q. What did he say?

A. I believe the only thing he ever did say was "I will try".

Q. Did you ever talk with him about his habit of drinking—getting drunk? A. No.

Q. Did you ever criticize him for that, tell him anything about [1209] it?

A. I told him that he would have to be in shape when he came to work out there for me.

Q. Did you use any expression touching liquor or drinking—drunkenness?

A. I don't never recall it.

Q. With respect to working hours, of the mechanics, explain what they are, and how the men are devoted to their work?

A. Well, when a mechanic is hired, he is told that he is on call 24 hours a day, regardless of whether it is Sundays, holidays or Christmas. If they have to have some work, he goes to work with the understanding that he will come to work whenever he is called.

There is no set time for him to report to work. He is liable to be called at five or six o'clock in the morning, or after he is through working, he has to be willing to be called back to work.

Q. Why is that necessary?

(Testimony of Kermit Rice.)

A. Our equipment is never stopped. We run it day and night as the work comes in. They have to go back out. We can't tie them up. [1210]

Q. Now, when was Archibald discharged?

A. On the morning of the 14th.

Q. Explain the incident, please?

A. Well, I just walked up to him and explained that our work had slowed up considerably, and that his work was unsatisfactory and that I just wouldn't need him any more.

Q. What did he say?

A. He just says, "All right".

Q. What time of day was that?

A. That was just before eight o'clock in the morning.

Q. Who was present at that time?

A. I believe Mr. Thomas and Mr. Nord was in the shop at that [1211] time.

Q. Were they there with you when you were talking to Archibald or were they in some other place?

A. As I recall, Thomas was standing right close by. I walked right over to him and told him to take my truck and haul this man's tools home for him.

Q. That was after you had mentioned the discharge to Archibald?

A. Yes, sir.

Q. At the time that you told Archibald that you were through with him, or that you would not need his services any longer, did he make any comment to you—did he say anything back to you?

(Testimony of Kermit Rice.)

A. No, sir.

Q. Had you ever discussed with Mr. Archibald the subject of belonging to any labor union?

A. No, sir.

Q. Did you know that Mr. Archibald was a member of a labor union? A. No, sir.

Q. Did he ever say anything to you, or you to him, about the joining of a labor union?

A. No, sir.

Q. Did you ever tell him at any time that you had belonged to a labor union, but that it hadn't done you any good? A. No, sir. [1212]

Q. At the time of his discharge, what is the fact as to whether or not you knew anything about his labor affiliations or union affiliations?

A. I knew nothing.

Q. Did his membership in a labor union or his activities in behalf of a labor union, if any such existed, have any influence or effect upon you, or was that a cause for his discharge?

A. No, sir.

Q. Did you have any information of any such activities at the time of the discharge?

A. No, sir.

Q. At the time that you told him that his services would be no longer required, did you say anything to Archibald about the fact that you were laying him off because he had been getting drunk?

A. I don't recall telling him that.

Q. At that time, did Archibald say to you in

(Testimony of Kermit Rice.)

substance or effect in reply to your advice that he was no longer needed, "I guess you know why"?

A. No, sir.

Q. Since his discharge, has he been back to the plant? A. Yes, sir.

Q. Have you talked with him?

A. No, sir. [1213]

Q. Do you know why he came back?

A. As I recall, he had left, I believe, a ridging tool out there and came back for it.

Q. Did Archibald ever say anything to you about the truck drivers' union? A. No, sir.

Q. Or memebbers in it? A. No, sir.

Q. Did you know of any activities that he professes to have engaged in with reference to this union? A. No, sir.

Q. Did the management of the Idaho Refining Company have anything to do with the discharge of Archibald? A. No, sir.

Q. That was a matter that you assumed entirely, yourself? A. Yes, sir.

Q. Why was it that you let him go on the morning of the 14th of November, 1941, rather than at any other time?

A. Well, we caught up on our work, and I just couldn't stand his work any longer that he put out, or his habits that he had.

Q. Did you have applications bh anyone else for work as a mechanic at that time? A. Yes, sir.

Q. Who?

(Testimony of Kermit Rice.)

A. There was a man by the name of Schroeder.
[1214]

Q. And where was he working at that time, if you know? A. Mr. Schroeder?

Q. Yes.

A. He was working for Bannock County.

Q. Did you subsequently employ him?

A. Yes, sir.

Q. When?

A. It was on November 20, 1941.

Q. And then did you have anyone that took Archibald's place between November 14 and November 20? A. No, sir.

Q. Who did the work in the garage during that period of time?

A. Oran Thomas and Mr. Brown and Clarence Bergman, Wayne Nord and myself.

Q. Were they all working there then?

A. Yes, sir.

Q. Mr. Rice, were you ever at any time, or are you, opposed in any way to labor unionism?

A. No, sir.

Q. Has the management, so far as you know, any officer of the company, ever expressed to you any disapproval of labor unionism? A. No, sir.

Q. Has there ever been any interference or suggestions one way or another touching labor unionism to you? [1215] A. No, sir.

Q. Have you ever made any discrimination in the hiring of union men or non-union men?

A. No, sir.

(Testimony of Kermit Rice.)

Q. Would the fact that they belonged to a union make any difference if they sought employment with you? A. No, sir.

Q. Would they be hired, just the same if they met other requirements? A. Yes, sir.

Q. Why was it that you didn't lay Archibald off before the morning of the 14th of November, 1941?

A. I had a little work that I was trying to get out, get caught up with.

Q. Did you get caught up with it?

A. Yes, sir.

Q. When did you first determine that you would let Archibald go?

A. Well, I fully made up my mind this Monday previous to his dismissal.

Q. That is the Monday that he didn't turn up for work?

A. The Monday he came out and couldn't work.

Q. That was the Monday of the week in which he was dismissed? A. Yes, sir.

Q. And did you mention the fact to him at that time? [1216] A. Yes, sir.

Q. And what did you tell him?

A. I told him that I couldn't stand for that kind of carryings on any more.

Q. What did he say?

A. Well, he just says, "I got the bellyache".

Q. What did you say to that?

A. I says, "You are not any good out here. you had just as well go home."

(Testimony of Kermit Rice.)

Q. Anything further? A. No, sir.

Q. Did you know that the equipment of the Idaho Refining Company, the rolling equipment, was covered by insurance? A. Yes, sir.

Q. Did you know what companies carried this insurance? A. I did not.

Q. Did the matter of the wrecks of equipment, and the accidents sustained by the drivers come to your attention? A. Yes, sir.

Q. In what way, Mr. Archibald?

A. Well, from the insurance company—
Trial Examiner Riemer: Speak up, please.

A. From the insurance company.

Q. (Mr. Merrill, continuing): Who would give you that information? [1217]

A. Mr. Rube Turner.

Q. On more than one occasion?

A. Yes, sir.

Q. What did he say to you?

A. He said that if the accidents kept on continuing, the first thing we knew, we would have a cancellation of our insurance policy, and it would be awfully hard to replace it.

Q. How many times did Mr. Turner tell you that? A. On several times.

Q. Was that to you privately or when others were present or both?

A. Privately, I think, is the only time that he ever told me.

Q. What did you do in response to those statements, if anything?

(Testimony of Kermit Rice.)

A. I told the drivers that they would have to be more careful, told them what the conditions were, what would happen.

Q. How often did you tell the drivers that?

A. They were told every time that we had an accident.

Q. How many accidents occurred during the summer and fall of 1941 up to November 14, if you know? A. I don't know.

Q. When the accidents would occur, what would be done with the trucks, would they be brought into the place for repair, or be repaired elsewhere?

A. Sometimes they were brought in, sometimes they were repaired [1218] in other shops.

Trial Examiner Riemer: Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill, continuing): Would all accidents be reported to you, or just those that came into your shop?

A. No, they were all reported to me.

Q. And when an accident was reported to you, what did you do?

A. You mean after it happened, is that what you mean?

Q. Yes, when you would get the report of an accident, would you say anything or do anything, or what?

A. Well, I would call the insurance company and tell them.

Q. Whom would you call?

(Testimony of Kermit Rice.)

A. The Turner Agency.

Q. Would you call the Turner Agency, or report to the office of the Idaho Refining Company?

A. I would report or call the Turner Agency.

Q. Then what would happen, if you know?

A. Well, they in turn would, as I understand it, notify an Adjusting Bureau.

Q. Did you ever discuss the matter of the proposed cancellation of the policy with Mr. Gilbert Moyle? A. Yes, sir.

Q. Did you ever hear him discuss the matter with the employees—the truck drivers? [1219]

A. Yes, sir.

Q. What would he tell the drivers in your presence?

A. Well, he told them at one meeting that if it were cancelled we would have an awful hard time replacing that insurance.

Q. Did you ever have meetings with the drivers for discussion of these accidents and wrecks?

A. Yes, sir.

Q. Which drivers would be called in?

A. All the drivers that would be in town.

Q. How many times did this occur—how many meetings did you have?

A. Oh, there were several meetings. I don't remember exactly how many there was.

Q. Would the character and nature of the accidents be discussed at the time?

A. To some extent.

(Testimony of Kermit Rice.)

Q. Do you recall, or can you give us any reasonably definite statements of the accidents and their nature during the latter part of 1941, and particularly where trucks were covered by Policy 227?

Trial Examiner Riemer: Read the question, please.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. There was one accident at Weiser.

Q. And who was the driver? [1220]

A. Wayne Douglas.

Q. Yes. A. They testified——

Q. No, don't say anything about that. What other accident did you know of?

A. You say in the fall of 1941?

Q. Yes. Do you know of the accident of Patterson? A. Yes.

Q. Was that reported to you? A. Yes.

Q. Was the accident of Ellingford reported to you? A. Yes, sir.

Q. The accident of Douglas was the one at Weiser, was it not? A. Yes, sir.

Q. Did you ever hear of any accidents earlier than that, the accident of Henricksen?

A. Yes.

Q. Where was that? A. Nampa, Idaho.

Q. Did you ever hear of the accident of Whitesides? A. Yes.

Q. Where was that?

(Testimony of Kermit Rice.)

A. South of Ogden, Utah.

Q. Did you ever hear of the accident of Merrill,—Stanley Merrill? [1221]

A. Which accident?

Q. Did he have more than one?

A. Yes, sir.

Q. How many did he have?

A. Three.

Q. Well, did you hear of each of them?

A. Yes, sir.

Q. Did you ever hear of the accident of John Evans? A. Yes.

Q. At the Kraft Cheese crossing?

A. Yes.

Q. How many accidents did he have?

A. Two.

Q. What time of the year were those accidents?

A. One was in the fall, and the other one was in the summertime.

Q. Of what year?

A. I believe that one was in the fall of 1940 and the other one in the summertime of 1941.

Q. Where did those occur?

A. At the Kraft Cheese crossing.

Q. What was the character of the equipment that these drivers were driving as to its upkeep, repairs, the maintaining of the trucks, the condition of the trucks, and so forth?

A. Well, every time when something happened, we have a regular form he writes it down on. [1222]

Q. That is what I want. What have you to say

(Testimony of Kermit Rice.)

with reference to the character of the trucks and the trailers from a mechanical standpoint that the drivers would take out on the road, would they be in defective condition, or in good condition?

A. They would be in good condition.

Q. What was done with reference to examining them and determining their condition?

A. It was examined every time they came in.

Q. Yes. By whom was it examined?

A. By myself, mechanics, and the grease men.

Q. Now, if anything was found wrong, or any apparent defects, what would be done?

A. It was repaired.

Q. When would it be repaired with reference to the next trip?

A. Before the next trip.

Q. When a truck had been out on a run, would it always be brought back to the shop?

A. Yes, sir.

Q. Before any loading was done?

A. Yes, sir.

Q. What would be done to the truck when it was brought back?

A. It was greased, and all tires checked, the fire extinguisher checked, lights, electric flares, oil check and water check.

Q. What examination was to be made, if any, for mechanical defects? [1223]

A. It was all looked over while it was being greased.

(Testimony of Kermit Rice.)

Q. Was that the case with every truck that went out on the road? A. Yes, sir.

Q. What have you to say then with reference to the general condition of trucks and trailers that were used for transporting products?

A. Good condition.

Q. Now, when did you first learn of the purported cancellation of the insurance by the insurance company?

A. It was on the evening before I let the drivers go.

Q. When were the drivers discharged?

A. It was on November 14, 1941.

Q. At what time?

A. Well, they were notified all the way from about 8:30 in the morning until along about in the afternoon, and at noon.

Q. Had you been advised with reference to their discharge on the 13th?

A. In the evening, I was told to get a new crew.

Q. Who gave you that information?

A. Mr. Moyle.

Trial Examiner Riemer: Just a minute. I want to get this straight. Off the record.

(Discussion off the record)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill): What did Mr. Moyle tell you, and when did [1224] he tell it to you?

A. It was on the evening of November 13, he

(Testimony of Kermit Rice.)

told me the insurance policy had been cancelled, and to get me a new crew of drivers.

Q. Had you been advised before that of any difficulty with the insurance?

A. I had been advised that there was a possibility that it would be cancelled, yes.

Q. What Mr. Moyle was it that gave you that advice? A. Gilbert Moyle.

Q. Following this advice, what did you do that evening?

A. I started looking for some drivers.

Q. Did you do anything on the evening of the 13th of November, 1941, with reference to instructing any of the drivers to deadhead back from any point, and particularly Ogden?

A. I believe—we had a terminal at that time at Ogden, and I instructed Mr. Henninger to deadhead the truckdrivers back in who were there.

Q. Who was Mr. Henninger?

A. The truck dispatcher.

Q. And so you did not say anything then to the drivers about deadheading back?

A. No, sir.

Q. Is that the fact? A. Yes, sir. [1225]

Q. Now, did you do anything else on the evening of November 13, 1941, with respect to the discharge of drivers other than you have testified?

A. No, sir.

Q. What did you do on the morning of the 14th?

(Testimony of Kermit Rice.)

A. I called all the truckdrivers and told them to come out to the plant, that I wanted to talk to them.

Q. What time did they come out?

A. As I recall the first man came around about 8:30.

Q. When did the last man come out, if you remember?

A. I believe that it was—there was some of the boys came just about the time that I gave them their checks—they arrived out there.

Q. (Trial Examiner Riemer): What time was that?

A. That was right around 11:15 or 11:30.

Q. (Mr. Merrill, continuing): What did you tell the drivers as they came out?

A. I told them that the insurance had been cancelled and I was sorry, but I would have to lay them off.

Q. What comment, if any, did any of them make?

A. Well, I believe there was only one man that made any comment.

Q. And who was he?

A. A man by the name of Howard Davis.

Q. What did he say?

A. He just told me, "You can't can me; I belong to the union." [1226]

Q. What did you say?

A. Well, I was rather astonished. I didn't know that there was anybody belonged to the Union.

(Testimony of Kermit Rice.)

Q. Did you say anything to him?

A. I told him that it was just too bad—"Here is your check."

Q. What else was said, if anything?

A. That was all I said to him.

Q. Did you have a conversation that morning or the morning before the 14th of November with Mr. Ayres while Ayers was sitting in a truck, ready to go to Jerome? A. I don't think so.

Q. On the morning of November 13, 1941, at about 9:30, state whether or not you had a conversation with Mr. James Ayers, who was sitting in a truck, ready to go to Jerome, in which you said, in substance or effect, that you had heard that some of the boys had joined the union?

A. I did not.

Q. And in which Mr. Ayers said "yes", and did you say, "What do they want?" And Mr. Ayers is purported to have said, "\$185.00 per month, with \$100 for extra board drivers"?

A. No, sir.

Q. Did you have such a conversation?

A. No, sir.

Q. Did anything that I have suggested in that question take [1227] place between you and Mr. Ayers in any conversation? A. No, sir.

Q. Do you know a man by the name of Heckert?

A. Yes, sir.

Q. How long had you known him prior to the 14th of November, 1941?

(Testimony of Kermit Rice.)

A. I believe that he was,—he went to work in the fall of 1940.

Q. As a matter of fact, it was in February of 1940, was it not, and he worked until November 14, 1941?

A. It could be, yes.

Q. Did you give him his test run?

A. Yes, sir.

Q. Following the test run, what was done?

A. Well, he was just told that I thought that he would be satisfactory, and to fill out an application blank and leave it there, or mail it back to me, and if I needed him. I would call him.

Q. What did he do, if you know?

A. As far as I know, he went back to Hailey.

Q. Did he go over and see Arch Webb?

A. He could have.

Q. You were not present if he did?

A. No, sir.

Q. At the time that you made that test run with him, did you [1228] have any conversation with him touching any labor union?

A. No, sir.

Q. Did you ask him if he belonged to any labor union?

A. No, sir.

Q. Did you say anything to him or make any comment as to what Mr. Gilbert Moyle—what you thought Mr. Gilbert Moyle thought about unions?

A. Will you read that question?

Trial Examiner Riemer: Read the question.

(Last question read aloud by the reporter as hereinabove recorded.)

(Testimony of Kermit Rice.)

A. No, sir.

Q. (Mr. Merrill, continuing): Were there,— was there any conversation passed between you and Mr. Heckert at that time or any other time with respect to membership in any labor union?

A. No, sir.

Q. Or labor unions? In any respect?

A. No, sir.

Q. Do you know a man by the name of Moss— Trevor Moss?

A. Yes, sir.

Q. Did he ever work at the Refining Company plant?

A. Yes, sir.

Q. Did you ever discuss with him union matters?

A. No, sir. [1229]

Q. Did you ever say to him in substance and effect with respect to drivers that had been discharged, quoting,

“Those sons of bitches are never going to drive out here again?”

A. No, sir.

Q. Did you have any conversation with Moss touching the discharged drivers?

A. Yes, I did.

Q. What was that conversation and when?

A. Well, I picked up the story around there that there was some of the older drivers, that is, drivers that had been discharged, that were going to beat him up over in a restaurant, so I asked him about it.

Q. What did he say?

(Testimony of Kermit Rice.)

A. He said, yes, that was a fact; he didn't know who they were, but they got tough and called him a scabdriver, and I told him that the thing to do was to stay away from those fellows, because I didn't want him to get beat up.

Q. Was anything else said about it?

A. No, sir.

Q. When did this conversation occur?

A. I believe that it was sometime in December.

Q. Of what year? A. 1941.

Q. When did Moss commence working for the company following [1230] the discharge of the drivers in November, 1941?

A. He was one of the first drivers I hired. It was right around the 17th of November, sometime.

Q. Well, now, was the matter of joining a union or membership in a union ever discussed in your presence by Mr. Moss and anyone else, Gilbert Moyle or anyone else? A. No, sir.

Q. You are sure of that? A. Yes, sir.

Q. Do you know a man by the name of R. E. Miller? A. Yes, sir.

Q. Did you ever discuss labor unions with him?

A. No, sir.

Q. Did you have a conversation with him at any time wherein any suggestion was made touching the reason for the discharge of these drivers, and in which you said in substance or effect, "If the drivers had gone to the office, instead of uptown, they would still be working for the company"?

A. No, sir.

(Testimony of Kermit Rice.)

Q. Did you ever make such comments to Miller?

A. No, sir.

Q. Or to anyone else? A. No, sir. [1231]

Mr. Merrill: We don't know that the employees you have in mind are any of those that you have produced here or not. They are not identified or tied up with these allegations.

Mr. Penfield: Obviously the Board could not make any finding unless we did put in some proof.

Trial Examiner Riemer: Is that the testimony of Heckert?

Mr. Merrill: I was not able to identify him.

Trial Examiner Riemer: I am asking you, Mr. Penfield, is that Heckert's testimony?

Mr. Penfield: Yes, it is.

Trial Examiner Riemer: I understand that allegation 5, sub-division 1 of the consolidated complaint, you refer to the testimony of Arthur L. Heckert.

Mr. Merrill: Well, if it be admitted by counsel for the Board that the only evidence that they rely upon in support of that [1232] allegation, and allegation 5-4 and 5-7, are the names of witnesses which they called, that is the testimony that I have directed to this witness' attention, then we will pass it.

Trial Examiner Riemer: I think that it would be easier and quicker if you would go ahead and ask your question. Go ahead.

Mr. Merrill: Will you read the question?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

(Testimony of Kermit Rice.)

A. No, sir.

Q. Did you on November 13, 1941, inquire of a truckdriver employed by the Idaho Refining Company whether or not he belonged to Teamsters Local 440? A. No.

Q. And whether other truckdrivers employed by the company belonged to that union?

A. No, sir.

Q. Did you on or about November or December, 1941, instruct any truckdrivers employed by the Idaho Refining Company to present any grievance directly through the management and not through the Teamsters Local 440?

A. No, sir.

Q. Or any other outside organization?

A. No, sir.

Q. And did you at that time or any time indicate that the employees of the Idaho Refining Company, or the truckdrivers [1233] employed by the company prior to November 14, 1941, had been discharged because they sought to be represented by the Teamsters Local 440? A. No, sir.

Q. How many truckdrivers—have you, since November 14, 1941, inquired of persons applying for employment as truckdrivers for the Idaho Refining Company and employees hired as truckdrivers, whether or not they belonged to any Teamsters Union or outside organization? A. No, sir.

Q. Did you ever advise certain employees or prospective employees that the company was op-

(Testimony of Kermit Rice.)

posed to membership of employees in any such unions? A. No, sir.

Q. How many of the truckdrivers were in the employ of the Idaho Refining Company at the Pocatello plant in November, 1941?

A. There was either 18 or 19.

Q. Were they all on the same basis with respect to rights or time, or were some of them on what has been called the extra board? A. Yes, sir.

Q. What is the fact?

A. Well, there was some on the extra board.

Q. What is meant by that? [1234]

A. Well, when I hired a driver it was understood with him that he went to work with the understanding that he was to stay on the extra board until a time when I knew definitely that I could employ him steady, and then he would be considered as a steady driver.

Q. State whether or not the apparent need for truck drivers as the winter approached diminished from what you had been carrying in the summer?

A. Yes.

Q. Were any of these drivers told that they would not be needed during the winter months?

A. Yes, sir.

Q. Whom did you tell that to?

A. On October 15, I told——

Q. What year? A. 1941.

I told Howard Davis, Guy Campbell, Lee Stanford and John Ray that they had better try to

(Testimony of Kermit Rice.)

find another job, because as far as I knew, there would not be enough work that winter for them.

[1235]

Q. (Mr. Merrill, continuing) Were the four men whom we have mentioned, John Ray, Guy Campbell, Howard Davis and Lee Stanford at that time working on a salary basis, or on an hourly basis?

A. They were working on an hourly basis.

Q. How were the other truckdrivers working?

[1236]

A. The other drivers were paid by the month.

Q. (Mr. Merrill, continuing) When would a driver who was working on an hourly basis, become eligible for payment by the month?

A. Not until after he had worked for six months.

Q. Then the facts are, that these four had not worked long enough for that change?

A. Well, I say six months—as previously stated, if I didn't have enough work to keep them steadily employed, they could remain on the extraboard for a year.

Mr. Merrill: That is all.

Cross Examination

[1237]

Q. (Mr. Penfield, continuing) You testified that you had three mechanics in your shop, and one or two grease men, is that correct, in the fall of 1941?

A. Yes, sir. [1246]

Q. Isn't it true that it was necessary for those mechanics to put in a great deal of overtime in order to get this work done?

(Testimony of Kermit Rice.)

A. We worked long hours.

Q. So they had to put in very considerably more than 40 hours a week, did they not?

A. That was contemplated when they hired in.

Q. Well, that wasn't the question.

A. What was the question?

Mr. Penfield: Read the question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Yes.

Q. (Mr. Penfield, continuing) Now, what occurred in November to make the work any less?

A. Business slowed down.

Q. Were you here when Mr. Brown was testifying this morning? A. Yes, sir.

Q. Would you say that he was incorrect when he said that the work continued steady?

A. Well, the work might have continued steady.

Q. As a matter of fact, you were just as busy as you always were at that time, were you not?

A. You mean in the shop?

Q. Yes. [1247] A. Yes.

Q. Was there any reason for things slowing down then or at that time that you can think of?

A. We had a lot of trucks sitting around the yard—business slowed down.

Q. You still had a lot of work in the shop, though?

A. Yes, there was quite a lot of work in the shop.

(Testimony of Kermit Rice.)

Q. As a matter of fact, when you discharged Mr. Archibald, you had to pitch in and do quite a bit of work yourself, didn't you?

A. Very little.

Q. (Mr. Penfield) And would you say that he was incorrect when he said that he had to work long hours? [1248]

The Witness: I don't believe Mr. Brown worked longer hours than he had been working.

Q. (Mr. Penfield, continuing) Do you know the average hours per week that Mr. Archibald worked during the time that he was employed?

A. Average hours per week?

Q. Per day?

A. It was something around 9 or 9-1/2 hours, I believe.

Q. Was that on a 7-day week?

A. Yes, I believe that it was figured 7 days a week.

Q. Were the other mechanics working about the same? A. Yes, sir. [1249]

Q. (Mr. Penfield, continuing) Now, on this particular Monday before the 14th, Archibald wasn't drunk, was he?

A. He wasn't able to work. I couldn't testify whether he was drunk or not. [1258]

Q. You don't claim that he was drunk, that he came to work drunk, do you?

A. He wasn't drunk at the time he was there.

Q. Was he sick?

(Testimony of Kermit Rice.)

A. Well, he was all doubled up, and said he had the bellyache.

Q. As far as you know, he did have the bellyache, didn't he?

A. Well, from the looks of his eyes, he really had the bellyache, all right.

Q. (Trial Examiner Riemer) Did Archibald work on Monday, November 10? I have been under the impression heretofore that he didn't show up for work on Monday, November 10?

A. He came to work.

Q. He did come to work? A. Yes, sir.

Q. (Mr. Penfield, continuing) Did you send him home? A. Yes, sir.

Q. Wouldn't you send your mechanics home who were sick?

A. Yes,—if they are sick—send them home.

[1259]

Q. When did you call these meetings of the drivers that you spoke of?

A. Well, we had those meetings just at random as we could get a bunch of the boys together.

Q. What was discussed at these meetings?

A. Well, the care of the equipment and being more careful with our commodities. [1263]

Redirect Examination

Q. (Mr. Merrill, continuing) Mr. Rice, you have been asked touching the fifth wheel on the truck that Evans had when he had an accident. I believe that you said it was locked. What [1273] explanation is there for that?

(Testimony of Kermit Rice.)

A. Well, when they lock those fifth wheel tables, it is easier to back a trailer out of the garage. Now, you take a unit 55 feet long, and that is pretty long and takes a pretty big space to back it out.

Q. What was the practice in the garage relative to locking the fifth wheel?

A. The grease monkeys generally lock them, back the trailer out, then unlock them.

Q. Would the driver have anything to do with unlocking the wheel?

A. No. He should inspect it.

Q. If he should find it locked, what should he do?

A. Unlock it.

Q. Would the drivers be capable of doing that sort of thing?

A. Yes, sir.

Q. What is the fact as to whether or not all the drivers know that is to be taken care of, if it is locked, to unlock it?

A. Yes, sir.

Q. And in this instance, Evans failed to unlock it?

A. Yes, sir.

Q. In a matter where he should have unlocked it?

A. Yes, sir.

Q. What have you to say in connection with whether or not that was one of the reasons causing the accident? [1274]

A. If it had been unlocked, he wouldn't have torn the tongue out of the trailer.

Q. Isn't it a fact that because he failed to unlock it, that was one of the reasons for tearing the tongue out of the trailer—is that what you mean?

A. Yes, sir.

(Testimony of Kermit Rice.)

Q. With respect to Archibald. He spoke to you that morning, I believe you said, of Monday of the work that he was discharged, and said that he had a bellyache. Did he tell you what kind of a bellyache he had? A. No, sir.

Q. Do you have any idea of the type or character of his bellyache?

A. Well, as I said, he looked like he had been drinking.

Trial Examiner Riemer: Was it a bellyache or a hangover?

There is a big difference.

A. Well, I don't know. He might have been top-heavy with a headache. He was all bent over.

Q. What was there about his eyes or face that caused you——

A. His eyes were all bloodshot.

Q. From that, you concluded what?

A. That he had been drinking. [1275]

Redirect Examination (Continued)

Q. (Mr. Merrill) Following November 1, 1941, within a reasonable time thereafter, how many did you hire for truckdriving?

A. I believe that it was 18.

Q. Were any others of the 18 not used, then?

A. Well, at the time of his accident I believe they were all [1284] being used. However, a little later on, some of the boys were laid off.

Q. Now, reducing the force to what number, the normal force of truckdrivers?

A. About 14. [1285]

(Testimony of Kermit Rice.)

Recross Examination

Q. (Mr. Penfield) What was the salary of the crew of drivers that were laid off.

A. Most of those drivers were receiving \$160 a month.

Q. When you say "most of them", you have reference to those that you called the "regular drivers"? [1287]

A. Yes, sir.

Q. Excluding those that you said were extra board drivers?

A. Yes.

Q. What salaries were paid the new drivers that were hired?

A. I believe that it was \$175 a month. [1288]

Redirect Examination

Q. (Mr. Merrill) Counsel asked you with respect to the pay of the truckdrivers, and you said they were receiving \$160 a month. What was the pay being given to those who were on the extra list?

A. They received 60 cents an hour.

Q. And time and a half for overtime?

A. No, sir; for 60 hours a week, they were under Interstate Commerce Commission regulations.

Q. With respect to the governors that you say were on these trucks: could they be tampered with by the drivers?

A. Very easily.

Q. (Trial Examiner Riemer) Were they?

A. I found a number—

Q. Tell us whether they were tampered with?

A. I found a number of them that had been tampered with. [1291]

(Testimony of Kermit Rice.)

Q. (Mr. Merrill, continuing) How would they be tampered with?

A. The setting had been changed.

Q. How could that be done?

A. Just flip a little plate over on the vacuum type governor, and adjust a screw; on the fly-ball type governor, all you had to do is set up a nut or a bolt.

Q. When you would find that they had been thus tampered with, what would it indicate, that the speed had been increased?

A. Yes, it had always been increased.

Q. Do you remember to what limit the speed had been increased on any of those that you observed had been tampered with?

A. Well, we checked some—when we checked them, they wouldn't even cut off at all, the vacuum type governors. [1292]

C. E. HENNINGER

was called as a witness by and on behalf of the Respondent, and, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: What is your name?

The Witness: C. E. Henninger.

Trial Examiner Riemer: Where do you live?

The Witness: 68 Willowood, Pocatello.

(Testimony of C. E. Henninger.)

Direct Examination

Q. (Mr. Merrill) For whom are you working, Mr. Henninger?

A. The Idaho Refining Company.

Q. How long have you been working for that company?

A. Since the 16th of June, 1938.

Q. Prior to that time, where did you work?

[1296]

A. Big Springs, Texas, for the Cosdon Petroleum.

Q. When you came to work for the Idaho Refining Company, in what capacity did you work?

A. A treater.

Q. Explain what you mean by a "treater"?

A. Well, a treater is a person or persons that with chemicals treat the gasoline in such a manner that it is suitable for the public.

Q. Now, in your capacity, did you have any supervisory authority over anybody else?

A. No.

Q. How long did you work for the Idaho Refining Company in that capacity?

A. Oh, around a year.

Q. Then what service did you perform?

A. I took charge of the loading dock.

Q. Do you remember the date that you took charge of the loading dock?

A. No, I don't. It is on record. I can't tell you what date it was.

Q. What position are you now holding,

A. I am—now, I am in charge of the loading dock, the treater, and, truck dispatcher.

(Testimony of C. E. Henninger.)

Q. When did you assume those duties?

A. I assumed the truck dispatching possibly six months to a year [1297] after I took charge of the loading dock.

Q. After you took charge of the loading dock?

A. Yes, sir.

Q. Could you give the year in which you assumed your present position, about the month and year?

A. Oh, I imagine that it was in the spring of 1940.

Q. And since that time you have had the same job that your are now holding? A. Yes.

Q. What are your duties under that position that you are now holding?

Q. You mean all my duties?

Q. Yes, just a general statement.

A. Well, I supervised the treating, to see that all gasolines and distillates are treated to go to storage corectly. I supervise and see that all the orders for gasoline to various customers are filled and delivered. After the trucks are all loaded, I see that the drivers are called to get the trucks out.

Q. Do you have any contacts with the mechanical department? A. Yes, sir; very much.

Q. What are those contacts?

A. Well, I am in need of trucks all the time, and I contact the garage and the foreman and the mechanics and keep after them so that I can have plenty of trucks to deliver my products. [1298]

(Testimony of C. E. Henninger.)

Q. Do the truckdrivers assist you on the loading dock, or in your department?

A. Once in a while, yes.

Q. Now, in your contacts with the mechanics, did you become acquainted with a man by the name of Archibald?

A. Yes, sir.

Q. Now, did you ever observe him under the influence of liquor while on the job?

A. Yes, sir.

Q. How did you make that observation?

A. Well, it was one morning—I can't recall the day,—but I was going over to the garage to see about a truck, and I met Mr. Archibald in the door, coming out, and I backed off and looked at him a minute, and I said, "Boy, you sure had a tough night."

Q. What did he say? [1299]

A. Well, he just kind of grinned, and went on out.

Q. Did you smell any liquor on his breath?

A. I did.

Q. What else did you observe that made you think that he was under the influence of liquor?

A. Well, his eyes were all bloodshot, and his face was very red. He wasn't any too steady on his feet.

Q. Where did he go, if you know, then?

A. Well, I didn't know at that time. Mr. Rice came over and asked me if I had seen him, that he had disappeared, and I said, "Well, I saw him just a few minutes ago", and later we noticed him in a car outside of the gate.

(Testimony of C. E. Henninger.)

Q. Do you remember how long he remained in that car?

A. No, I didn't pay any more attention to him.

Q. Had you made any other observations as to the character of his work, or his attitude towards his work?

A. Well, I knew he was—and had cautioned him two or three times—he was very slow.

Q. Did you ever make any complaints, or suggestions to Mr. Rice touching the continuance of Archibald in employment?

A. I think that I did once, yes.

Q. When was that?

A. When I was in a hurry for a truck, it didn't seem like there was anyone trying to hurry on it, and then I asked Mr. Rice when he was going to get somebody that could hurry up a little [1300] bit.

Q. Did you make any comment on Archibald?

A. I was speaking of Archibald at that time.

Q. What did Rice say, if anything?

A. He said, well, he would just have to do something.

Q. How long was that before Archibald was discharged?

A. Oh, I would say possibly in the neighborhood of a couple or three weeks before this time.

Q. I *ma* directing your attention to a meeting of the employees of the Idaho Refining Company at which Mr. Henry D. Moyle spoke; do you recall the incident?

A. Yes, sir.

Q. About when did that occur?

(Testimony of C. E. Henninger.)

A. You mean the time of day or the time of year?

Q. Both.

A. Well, if I remember right, it was in the spring of the year at noon.

Q. Was it not in 1939, or was it some other year, if you remember?

A. Well, let's see; I believe that was in 1940.

Q. What was your particular work at that time?

A. I was on the loading dock at that time.

Q. How was this meeting called, if you know?

A. Mr. Kinnich, the superintendent came out to the loading dock and said, "Get all the men at the plant or anyone you [1301] can reach by telephone to be at the office door shortly after twelve o'clock."

Q. Did you do so? A. Yes.

Q. Did you attend? A. Yes, sir.

Q. Was there any other meeting, aside from that, or was that the only such meeting that occurred at which Mr. Henry D. Moyle spoke?

A. Yes, it was.

Q. The only meeting? A. Yes, sir.

Q. Now, then, what did Mr. Moyle talk about, Mr. Henry D. Moyle?

A. Mr. Moyle talked at that time about the FHA loans, and we were very interested in building some homes—we wanted to know what the company would do in order to help all of the employees on this matter.

Q. Did he talk about anything else?

A. No, I don't think so.

(Testimony of C. E. Henninger.)

Q. Was there any mention at that time made by him of the Association?

A. The Association wasn't mentioned.

Q. You know what I mean by the "Association"? A. Yes, sir. [1302]

Q. Was there any statement made of any kind or character touching any of the members of the Association? A. No, sir.

Q. And for whom was that meeting, then?

A. It was for all the employees of the Idaho Refining Company.

Q. And had no reference to any association members? A. No, sir. [1303]

* * * * *

Q. Did you have anything other to do with their discharge? A. No, sir.

Q. Did you know at that time of any union activity of any of the truckdrivers? A. No, sir.

Q. Did you know whether or not any of them belonged to the Union? A. No, sir.

Q. Or would that have made any difference with you in your department? A. No, sir.

Q. In any sense of the word? A. No, sir.

Q. You knew, of course, these truckdrivers personally? A. Yes, sir. [1304]

Q. Did you ever offer any of them employment?

A. Yes, sir.

Q. State whom, and when.

A. On the 14th of December, I contacted——

Q. What year? A. 1941.

Q. Yes. A. I contacted Mr. Whitesides.

Q. Myron D. Whitesides?

(Testimony of C. E. Henninger.)

A. Yes, and told him that I had a job on the loading dock and asked him if he was interested.

Q. Did you tell him how much the job paid?

A. Yes, sir.

Q. What did you tell him?

A. I told him 60 cents an hour, 40 hours a week, with time and a half for all over 40 hours.

Q. What did Mr. Whitesides say?

A. He said that he was very much interested, and he would let me know the next morning, that he would like to give Covey notice.

Q. Who was Covey?

A. Covey Gas & Oil Company, Pocatello.

Q. Was he working for that company at that time? A. Yes, sir.

Q. And this was on the 14th day of December, 1941? [1305] A. Yes, sir.

Q. And what next occurred, if you know?

A. The next morning he called me and said, "I am very sorry, but I can't go to work at the refinery".

Q. Did he say why?

A. He said that the union advised him not to, didn't want him to.

Q. Did he say anything else? A. No.

Q. But you knew at that time that he was working for the Covey Gas & Oil Company of Idaho?

A. Yes, sir.

Q. Was Mr. Whitesides later re-employed by the Refining Company? A. Yes, sir.

Q. When? A. February 11, 1942.

(Testimony of C. E. Henninger.)

Q. How long did he work for the Idaho Refining Company?

A. Trial Examiner Riemer: In what capacity?

The Witness: He was in charge of the refinery warehouse.

Q. (Mr. Merrill, continuing): At what wage, if you know? A. I don't know.

Q. How long did he continue working for the company?

A. Until June, 1942,—June 19, 1942.

Q. Do you know the reason that he left, then?

A. Yes. [1306]

Q. What was it?

A. He secured a better position with the Arms Plant in Utah.

Q. Was his leaving voluntary?

A. Yes, sir.

Q. Do you know when he went to work for the Covey Gas & Oil Company of Idaho?

A. Yes, sir.

Q. When? A. December 1, 1941.

Q. How long did he work for that company?

A. Until February 11, 1942.

Q. That was the time that he came over to the Refining Company? A. Yes, sir.

Trial Examiner Riemer: Will you tell me those dates again, Mr. Witness?

The Witness: He started work for the Covey Gas & Oil Company December 1, 1941 and worked for Covey Gas & Oil until February 11, 1942.

Trial Examiner Riemer: Thank you.

(Testimony of C. E. Henninger.)

Q. (Mr. Merrill, continuing): Then commenced with the refining company and continued until June 19, 1942? A. Yes, sir.

Q. Who else did you offer employment to, if anyone?

A. I contacted Johnny Evans, and I told him the same as I told Whitesides. [1307]

Q. Did you tell Mr. Evans the amount of pay?

A. Yes, sir.

Q. 60 cents an hour, and time and a half for all over 40 hours a week? A. Yes, sir.

Q. Did you tell him the work that he was to do?

A. Yes, sir.

Q. What did you tell him?

A. I told him that it was the loader-helper job on the dock.

Q. Did Mr. Evans make any comment with respect to pay? A. No, sir.

Q. What did Mr. Evans say, if anything?

A. He said that he could not go to work.

Q. Did he give you any reason?

A. Well, he stated that the union didn't want them to go to work at the Refinery because he thought that it would hurt their case against the refinery.

Q. Did he go to work? A. No, sir.

Q. Did you offer employment to anyone else?

A. Yes, sir.

Q. Who? A. Mr. Cornia.

Q. When did you offer Mr. Evans this employment?

(Testimony of C. E. Henninger.)

A. December 14th—I mean the 15th. [1308]

Q. 1941. Did you offer employment to Boyd Cornia?

A. Yes, sir.

Q. On what date?

A. The same date.

Q. What did you tell Boyd Cornia?

A. He said that he was in the same position as Mr. Evans.

Q. I say, what did you tell him?

A. I told him that I had a job on the dock at 60 cents an hour, 40 hours a week, and time and a half for overtime. He said that he was in the same position as Mr. Evans.

Q. Was he there when Mr. Evans was there?

A. Yes, I talked to Johnny and Boyd about the same time.

Q. Well, what I wanted to know, state what Mr. Cornia said to you when you made him the offer?

A. Well, I said, "Boyd, do you want the job——"

Q. Was he there with Evans at the time?

A. Yes, sir. And he said, "No," he was in the same position as Mr. Evans.

Q. Did he then at any later time accept employment?

A. No, sir.

Q. Who else, if any, did you offer employment?

A. Mr. Miller.

Q. When?

A. December 15, 1941.

Q. Is that R. E. Miller? [1309]

A. Yes.

Q. What employment did you offer him?

A. The same as Mr. Evans and Mr. Whitesides and Mr. Cornia.

(Testimony of C. E. Henninger.)

Q. What, if anything, did he say?

A. Mr. Miller came over and said that he would stay around that afternoon and look things over and let me know about it in the morning.

Q. What did you tell him about pay?

A. 60 cents an hour for 40 hours, time and a half for overtime.

Q. Did he make any complaint about the pay or the job? A. No, sir.

Q. Did he let you know the next morning?

A. Yes, he came back over the next morning.

Q. What did he say?

A. He said, "I am unable to go to work."

Q. Did he give you any reason? A. Yes.

Q. What did he say?

A. He said, "The Union advised us not to go to work at the Refinery", he said, "although I would like to".

Q. Did he make any further explanation or suggestion? A. No, sir.

Q. Did he later enter the employ of the Refining Company? A. Yes, sir.

Q. When? [1310]

A. He started to work at the Idaho Refining Company on March 11, 1942, as a truckdriver.

Q. Is he still working? A. Yes, sir.

Q. In that capacity? A. Yes, sir.

Q. Now, did you offer employment to any other discharged truckdrivers?

A. Yes, Mr. Kenney Brower.

Q. Is that K. C. Brower? A. Yes, sir.

Q. When did you offer him employment?

(Testimony of C. E. Henninger.)

A. On the 18th of December.

Q. Was that 1941? A. Yes, sir; 1941.

Q. Where did you offer him the employment?

A. On the loading dock.

Q. What did you say to him?

A. I told him that I had a job on the loading dock that paid 60 cents an hour for 40 hours, with time and a half for all overtime.

Q. Did you tell him that he could have that job?

A. Yes, sir.

Q. What did he say?

A. He said if I would give him two days to get rid of a load of [1311] grapefruit and nuts, he had on his truck, he would go to work.

Q. What did he mean by that, if you know?

A. Well, he was hauling some produce from Nevada, or some place, I don't know exactly, kind of on his own hook.

Q. That is, he was hauling fruit and nuts from the South up here for marketing purposes?

A. Yes, sir.

Q. Trucking them up? A. Yes, sir.

Q. What did he do?

A. On December 20 he started to work.

Q. With the Refining Company?

A. Yes, sir.

Q. In what capacity?

A. As a loader-helper.

Q. How long did he continue working?

A. He worked until February 20, 1942.

Q. Two months? A. Yes.

(Testimony of C. E. Henninger.)

Q. What did he do then?

A. He *quite* February 20, went to work for the Arms Plant in Ogden.

Q. Was his discontinuance of employment voluntary? A. Yes, sir.

Q. I mean from the Idaho Refining Company? [1312]

A. Yes, sir.

Q. Did he tell you what he was doing?

A. Yes, sir.

Q. Why he was leaving? A. Yes, sir.

Q. Did you offer employment to anyone else?

A. Yes, I offered employment when Mr. Brower left, to Mr. S. R. Burkholder.

Q. Where did you offer him employment?

A. As a loader-helper at the Idaho Refining Company.

Q. What conversation did you have with Mr. Burkholder touching that?

A. I told him that the pay was, 60 cents an hour, and time and a half for all over 40 hours a week.

Q. What did he say?

A. He said that he was—he thought he was going to work for Garrett, and if he didn't go to work for Garrett, he would let me know, in the next couple of days, and go to work.

Q. Did you,—did he say anything to you later?

A. Yes, he called me in about two days and told me that he secured a job with Garrett.

Q. Did he then go into the employ of Garrett Transfer Company, if you know? A. Yes.

(Testimony of C. E. Henninger.)

Q. Did he subsequently work for the Refining Company? [1313] A. Yes, sir.

Q. I mean, did he later work for the refining company? A. No, sir.

Q. Did you offer employment to any of the others of these discharged truckdrivers?

A. No, sir.

Q. Those six were all? A. Yes, sir.

Q. Did you have any conversation with Mr. Evans during the month of December, 1941? The date not having been fixed definitely by Mr. Evans—with respect to the discharge of these drivers?

A. Yes, I did.

Q. What was that conversation?

A. Well, Johnny came over to the refinery two or three times and we talked about different things—not exactly about the truckdrivers, but on this particular time, I think that I made a remark to him that it was too bad that the insurance was cancelled and that the boys were all thrown out of work.

Q. At the time you made that comment, I will ask you whether or not Mr. Evans said in substance or effect that you knew better, that they were fired because they belonged to the union to which you said,—hung your head and said, “Maybe you are right”?

A. I might have made that remark, but I never hung my head [1314] and said, “You might be right.” I thought Johnny knew me better than that.

(Testimony of C. E. Henninger.)

Q. Did you make any comment that Evans might be right? A. No, sir.

Q. Some comment was made that you found that out during the hunting season around Jerome. What is the fact?

A. I was never hunting at Jerome, and I have only been at Jerome one in my life since I have been in Idaho.

Q. Do you go hunting? A. Yes, sir.

Q. Where do you go?

A. Aberdeen and Blackfoot.

Q. Did you know at the time of the discharge of these employees that they belonged to Local 440?

A. No, sir.

Q. Did you learn of that later?

A. I did after the 14th.

Q. And from whom?

A. The truckdrivers themselves.

Q. State whether or not you told Mr. Evans in substance or effect that Merrill and Whitesides had been up and down service stations saying that the union was going to make it tough for the refinery company? A. I did not.

Q. Did such occur? [1315]

A. I don't know.

Q. Did you have any information of anything of that sort? A. No, sir.

Q. Will you explain how Mr. Miller came to be hired as a truckdriver, which I believe you said was March 11, 1942?

(Testimony of C. E. Henninger.)

A. March 11, yes, sir. Well, I had a very important shipment of gasoline to make to Salt Lake and there wasn't any drivers available and Mr. Rice and Mr. Gilbert Moyle were out of town and I had to get this gasoline delivered, so after trying to locate both men for a number of hours, I drove over to R. E. Miller's home about eight o'clock that night, and Mr. Miller was home, and I walked in and I said, "Would you like to go to work?" And he said, "Sure", and I said, "Well, get ready"; and he said, "Doing what?" And I said, "Driving a truck", and he said, "Sure enough?" and I said, "Yes, you can go to work, can't you?" and he said, "Sure, I got a withdrawal card when I went to work at Kraft's", and I said, "Well, get your shoes on and let's go."

Q. Was that all of that conversation?

A. Yes, sir.

Q. Was there any other comment made touching any union activity of any kind or character?

A. Oh, I don't know what—remember now what Red said, but I told him at the time that I didn't care whether he belonged to the union or not,—I wanted a man.

Q. Did you care whether or not he belonged to the Union? [1316]

A. No, I didn't, it didn't make any difference to me.

Q. It didn't make any difference in his employment whatever?

A. No, sir.

(Testimony of C. E. Henninger.)

Q. Did it with any of the men who had worked under you? A. No, sir.

Q. Had it ever made any difference?

A. No, sir.

Q. Mr. Henninger, have you since the 14th day of November, 1941, inquired of any persons applying for employment as truck drivers, whether or not they belonged or had belonged to the Teamsters Unions or any outside labor organization, or did you make any such inquiry of any employees hired as truckdrivers? A. No, sir.

Q. Have you ever advised them, or any of them, that the company was opposed to membership of the employees in such unions? A. No, sir.

Q. Did you in November and December of 1941 instruct the truckdrivers employed by the Idaho Refining Company to present any grievance that they had direct to the management, and not through Teamsters Local 440 or any other outside organization? A. No, sir.

Q. Did you indicate to any such employees at any time that the truckdrivers employed by the company prior to November 14 had been discharged because they sought to be represented by Teamsters Local 440? [1317] A. No, sir.

Q. State whether or not you at any time have ever attempted to dominate or interfere with the administration of the labor association that was organized at the Idaho Refining Company?

A. What was that question, again?

(Testimony of C. E. Henninger.)

Mr. Penfield: It seems to me that that calls for a conclusion.

Trial Examiner Riemer: I think that it does, too.

Mr. Merrill: All right, then I won't ask it if it is not proper.

Trial Examiner Riemer: I think that it calls for a conclusion, but I am going to overrule the objection.

Q. (Mr. Merrill) Will you state whether or not the Idaho Refining Company through yourself or any other officer or supervisory employee, if you know, have ever attempted to interfere with the operations of, or to dominate in any way the conduct or actions of the Idaho Refining Company Benefit & Labor Association? A. No, sir.

Mr. Penfield: The same objection, on the grounds that it is a conclusion.

Trial Examiner Riemer: Overruled.

Q. (Mr. Merrill, continuing): Did you know of any such interference or domination?

A. No, sir.

Q. Did you know whether or not any such existed? [1318] A. No, sir.

Q. As a supervisory employee, were you ever told to make any distinction between union or non-union men? A. No, sir.

Mr. Merrill: You may cross examine.

(Testimony of C. E. Henninger.)

Cross Examination

By Mr. Penfield:

Q. With respect to your instructions on November 13, 1941, isn't it true, Mr. Henninger, that you did send trucks out on November 13 and early on the morning of November 14?

A. I believe that I made that statement, yes, sir.

Q. You sent them out on various runs?

A. Yes, sir.

Q. Some of those runs were not completed until the evening of the 14th, is that correct?

A. That's right.

Q. You never offered any of these persons whom you referred to jobs as truckdrivers, did you, with exception of Mr. Miller? A. No, sir.

Q. You knew, did you not, that these employees had been driving trucks for a good many years?

A. Some of them.

Q. You knew that they were experienced truckdrivers?

A. I knew that some of them got their experience from the Refinery—not all of them. [1319]

Q. Was there any one of that group that was not an experienced truckdriver?

A. Mr. Leonard Fowler came to us to work at truck driving from filling stations at Covey.

Q. You never offered him a job, did you?

A. No, sir.

Q. I am referring to those that you offered jobs to.

(Testimony of C. E. Henninger.)

A. That isn't what you said.

Q. Well, I say it now. I am referring to those that you offered jobs to. A. No, sir.

Q. What do you mean "no"—do you mean that they were all experienced?

A. Yes, you said "wasn't experienced".

Q. Well, truckdriving calls for a degree of skill that is not required on the loading dock, isn't that correct?

A. Well, that answer might be mutual—it takes a little more under the hat to work on the loading dock than to be a truck driver.

Q. What do you mean "under the hat"?

Trial Examiner Riemer: He means brains.

The Witness: That's right.

Q. (Mr. Penfield, continuing): What does the work loading on the dock have to do that requires——

A. Well, the exact amount of gasoline delivered over the dock [1320] has to be correctly turned in to the office so that the correct yields, expense and cost and profit of the company is figured directly from the amount of gallons that go over that loading dock.

Q. As a matter of fact, truckdrivers have to do a certain amount—the truckdrivers collect money and make out reports of gasoline delivered, and that sort of thing, do they not? A. Yes.

Q. That takes a certain amount of brains, too, doesn't it?

(Testimony of C. E. Henninger.)

A. Yes, some of them had a very difficult time in doing it, too.

Q. But it takes a certain degree of skill in driving one of those transport trucks?

A. Mechanical skill, yes.

Q. The fact is, is it not, that these truckdrivers explained to you that they had been working at driving trucks for some years and that is the sort of jobs they wanted?

A. Some of them had, yes.

Q. Well, now, that isn't answering the question.

Trial Examiner Riemer: I don't think that the witness understands the question because of the way they are phrased or stated. They are negative. Put a positive or affirmative question to the witness.

Q. (Mr. Penfield, continuing): The drivers told you that they had been driving as truckdrivers for a good many years, and the jobs that they wanted were jobs as truckdrivers, did they not? [1321]

A. No.

Q. None of them told you that?

A. Not any of them that I contacted to go to work on the dock.

Q. How much overtime do the men on the loading dock work?

A. Well, I think that the records would show that. I couldn't exactly tell you.

Trial Examiner Riemer: Well, you are foreman on the loading dock.

Mr. Moyle: Might he finish his answer?

(Testimony of C. E. Henninger.)

A. (Witness continuing): The exact number of hours of overtime, I couldn't exactly say, but they get from 8 to 20 hours a week overtime in busy periods.

Q. (Mr. Penfield, continuing): From 8 to 20?

A. Yes, sir.

Q. Mr. Henninger, you were president of the Association at one time, were you not?

A. Yes, sir.

Q. At what time was that?

A. Well, I couldn't exactly say; I think that it is of record.

Q. Well, what is your best guess?

A. I wouldn't guess.

Q. It was after you took this present job, was it not—the last part of your term?

A. I don't know whether it was or not.

Q. You signed a statement for Mr. Babcock, did you not? [1322]

A. Yes, sir.

Q. I show you this and ask you if that is a statement that you made?

A. Could I compare this with my copy?

Q. Yes.

Mr. Merrill: I don't see any reason why he couldn't.

Mr. Penfield: I have no objection at all.

Mr. Moyle: Is that a signed copy?

Mr. Penfield: Yes, I have no objection to him comparing it.

A. Do you want me to read this whole thing?

Q. (Mr. Penfield, continuing): I just want you

(Testimony of C. E. Henninger.)

to state if that is the statement that you signed, is that your signature?

A. That is my signature on this sheet,—I think that is it.

Q. I call your attention to this portion in which you say,

“I am a member of the Employees Association at the plant. I was a charter member. I was president of it at one time after I was transferred to my present job.”

Is that or is that not a correct statement?

A. I don't know whether it is or not. If I knew what period I was president, I could answer your question.

Q. Well, you were the president, you have taken an active part in the Association, ever since you were president, have you not?

A. I haven't taken any part in the Association—any active [1323] part since June 1, a year ago.

Q. Well, you have attended meetings since then, have you not, Mr. Henninger?

A. I don't think that I have.

Q. As a matter of fact, you attended the meeting at which officers were elected in January, did you not?

Mr. Moyle: January of what year?

Mr. Penfield: January of 1942.

A. I don't think that I did.

Q. (Mr. Penfield): I show you Board's Exhibit 17-B which is the minutes of the annual meeting February 13, 1942—I beg your pardon—I said

(Testimony of C. E. Henninger.)

January,—I ask you if it is not a fact that those minutes show that you were present at that meeting? A. Yes, I believe it does.

Q. Does that refresh your recollection, Mr. Henninger?

A. Well, it shows that I was there. I evidently was.

Q. That was the meeting at which officers were elected for this year, was it not?

A. Yes.

Q. The president of the Association has something to do with running the organization, does he not?

A. I beg your pardon?

Q. The president of the Association has something to do with the running of the Association?

Mr. Merrill: That is objected to upon the grounds the by-laws [1324] that have been introduced in evidence would be the best evidence as to the powers of the president and what his duties are.

Trial Examiner Riemer: Overruled. Read the question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. Why, yes.

Mr. Penfield: No further questions.

Trial Examiner Riemer: Mr. Merrill?

Redirect Examination

By Mr. Merrill:

Q. Mr. Henninger, what advantages if any are

(Testimony of C. E. Henninger.)

there with respect to compensation for one belonging to the Association?

A. Well, there is quite a lot of advantage, because if you are hurt outside of the Refinery, that is not covered by state compensation, the Association pays.

If you are sick and can't work, or off for a certain number of days, the Association pays.

Q. Those privileges and advantages are additional, are they not, to such as may have to do with labor bargaining and things of that sort?

A. Yes, sir.

Q. Did you ever take any part in any labor activities of the Association, or was your interest in the Association after you became a supervisory employee confined to the benefits? [1325]

A. That is right.

Q. What is the fact?

A. I was only interested in the benefits.

Q. When other matters were discussed, did you remain or did you leave the meetings?

A. I was asked to leave the meetings. I didn't—I wasn't in on the discussion on any bargaining between the company and the Association.

Q. When were you asked to leave the meeting under those circumstances?

A. When the contract was drew up and discussed and voted on June 1 a year ago.

Q. And did you leave? A. Yes, sir.

Q. Did you take any part in any bargaining or discussion of any bargaining on wages, or conditions of the employees? A. No, sir.

(Testimony of C. E. Henninger.)

Q. Or were you ever present when such was discussed at the Association? A. No, sir.

Q. And has that been the fact ever since you became a supervisory employee? A. Yes, sir.

Q. Now, I believe that some of the truckdrivers were stationed at Ogden on the 13th or 14th of November, 1941, were they not? [1326]

A. Yes, sir.

Q. How were they handled—I mean to say, how was information sent to them of their discharge?

A. Of their discharge? I don't know.

Q. Were they deadheaded back?

A. They were notified by telephone to deadhead back to the refinery, yes, sir.

Q. Then after they had headed back, the information touching the discharges was imparted to them, is that the fact? A. I suppose so.

Q. You say that you didn't handle that?

A. No, sir.

Mr. Merrill: I see. That is all.

Recross Examination

By Mr. Penfield:

Q. Mr. Henninger, with respect to this meeting of February, 1942, you suggested, did you not, to Mr. Carlson, that he run for the position of secretary and you would back him in that position?

A. I was on the nominating committee yes, sir.

Q. You were on the nominating committee?

A. Yes, sir.

Q. Did you actually nominate Mr. Carlson?

A. I don't know whether I did or not.

(Testimony of C. E. Henninger.)

Q. You voted at that election, did you not?

A. I might have voted on the officers, yes, sir.

[1327]

Mr. Penfield: I believe that is all.

Mr. Merrill: I believe that is all.

Q. (Trial Examiner Riemer): Mr. Henninger, I don't know whether this has been asked or not. You work for the Idaho Refining Company?

A. Yes, sir.

Q. Who pays your salary?

A. Western Gateway.

Q. Your salary is paid by Western Gateway?

A. Yes, sir.

Q. Whom do you work for?

A. Well, I am under the supervision of the Idaho Refining Company.

Q. Who is your supervisor?

A. Mr. Gilbert Moyle——

Q. Do you take orders from him?

A. Yes, sir.

Q. But your salary is paid by the Western Gateway? A. Yes, sir.

Q. Do you hire employees for the Idaho Refining Company?

A. They are on the Western Gateway payroll, too.

Q. Is the loading dock on the Western Gateway payroll?

A. The men are paid, but the loading dock belongs to the refinery.

(Testimony of C. E. Henninger.)

Q. You hired R. E. Miller as a truckdriver?

[1328]

A. Yes, sir.

Q. To work for whom?

A. The Idaho Refining Company.

Q. Have you ever discharged any employees of the Idaho Refining Company?

A. Yes, sir—that is, men who were on my payroll, understand.

Q. When you offered jobs to Evans, Whitesides, and the others, was that offer of a job to them as a new employee?

A. Well, may I explain why I offered the job to these drivers?

Q. No, I am not interested in that. I think that is pretty clear. You needed men on the loading dock, and you offered positions to these people and they refused for one reason or another. What I am interested in knowing is this, Mr. Henninger, when you offered jobs to these men, did you say that the job would carry with it any seniority rights?

A. Oh, no.

Q. Or other privileges?

A. No, absolutely not.

Q. They would come in as new employees?

A. Yes, sir.

Q. That is all I wanted to know.

A. Yes, sir.

Q. Brower did accept a job, didn't he?

A. Yes, sir.

Q. He went to work on the loading dock about December 20, 1941? [1329]

A. Yes, sir.

(Testimony of C. E. Henninger.)

Q. Who paid his salary?

A. Western Gateway.

Q. Western Gateway? A. Yes, sir.

Q. Isn't it correct that if Evans and Cornia and Miller and the others had accepted the jobs that you offered them, their salaries, too, would have been paid by Western Gateway? A. Yes, sir.

Q. You started to work on,—for the Idaho Refining Company in June, 1938? A. Yes, sir.

Q. And came up from Texas?

A. Yes, sir.

Q. As a treater? A. Yes, sir.

Q. And you worked on that job until about June, 1939?

A. I think that is correct. There is about a year, I think, I worked as a treater.

Q. Were you president of the Association the year that you worked as a treater?

A. I think possibly that it would probably lap over from then, from the time I was a treater until I was on the loading dock, I am not sure about that.

Q. Then you became foreman of the loading dock about June, [1330] 1939? A. Yes.

Q. So it is possible that you were president of the Association during the year that you were foreman of the loading dock?

A. Well, I can't answer that. That is one thing that I forgot to look up.

Q. Is there any question in your mind, Mr. Henninger, that during your term of office as presi-

(Testimony of C. E. Henninger.)

dent of the Association you were either foreman of the loading dock or foreman of the loading dock in charge of the treaters and truck dispatching?

A. No, when I first took that job over, the truck dispatching was done in the office. I later acquired that.

Q. That is a later acquired title?

A. Yes.

Q. Then strike the truck dispatcher part of it, and repeat the same question, is there any question in your mind that during your term of office as president of the Association you were either foreman of the loading dock, or foreman of the loading dock and in charge of the treaters?

A. I think that is correct. [1331]

GILBERT MOYLE

previously sworn, was called as a witness by and on behalf of respondent, and further testified as follows:

Trial Examiner Riemer: You are Mr. Gilbert Moyle and you have previously been sworn and identified?

The Witness: Yes.

Direct Examination

By Mr. Merrill:

Q. When did you commence working for the Idaho Refining Company?

(Testimony of Gilbert Moyle.)

A. March 1, 1938.

Q. And are you still working for that company? A. Yes, sir.

Q. March 1, 1938, I believe, was at the inception of the company, when it was first organized?

A. Yes, sir.

Q. What were your duties when you commenced work?

A. To organize the sales department and the distributing end of the refinery business in Idaho.

[1332]

Q. Having then to do wholly with the sale of the products of the company? A. Yes, sir.

Q. How long did you continue in that employment?

A. Until the fall of 1939.

Q. And in the fall of 1939, what change, if any, was made?

A. They made me general manager.

Q. Have you been general manager of the plant there since the fall of 1939? A. Yes. [1333]

Q. Now, did you ever have any dealings or contacts with the Association? A. Yes, sir.

Q. In what way, Mr. Moyle?

A. In reference to their wage scale and working conditions.

Q. Before we get to that, were there ever any meetings arranged with you by any of the committees of the Association? A. Yes, sir.

Q. What committees?

A. A committee appointed I suppose by their

(Testimony of Gilbert Moyle.)

board of directors or officers for the purpose of contracting with the refinery [1335] for their wages and employment.

Q. Did you ever have any meeting with any grievance committee? A. Yes, sir.

Q. State whether or not the grievance committee communicated with you in writing at times?

A. They did, yes.

Q. When these communications were made to you, what would be done?

A. Well, we would consider the case and then report back to the committee our decision.

Q. I hand to you what has been marked for identification as Respondent's Exhibit 8. What is that, if you know, Mr. Moyle?

A. That is a letter written by the grievance committee to me, findings of the Grievance Committee justified—

Q. You don't need to say what it is, but signed by whom?

A. Signed by the committee, Kay Mills, D. W. Sutton, and S. R. Burkholder.

Q. Do you know those three men?

A. Yes, sir.

Q. What were they doing at the time?

A. Kay Mills worked in the plant, Mr. Sutton worked in the office, and Mr. Burkholder was a truckdriver.

Q. Did you receive this communication from the committee? A. Yes, sir.

Q. Did you act upon it? [1336]

A. Yes, sir.

(Testimony of Gilbert Moyle.)

Q. What are squawk sheets?

A. They are sheets that drivers make out giving information to the shop foreman as to the condition of the trucks when they are brought in, whether they need any repairs or service.

Q. Is that the practice followed in your company now? A. Yes, sir.

Q. State whether or not that practice has anything to do with this particular letter?

A. It has.

Q. What?

A. At that time, the drivers were complaining to me that on reporting the difficulties of their trips, that at times it wasn't completely followed out, and we instituted a system of having the drivers put in writing what they wanted—what was necessary to do to the truck before it could go out again.

Q. Was that the result of this letter?

A. Yes, I think that it was. [1337]

Q. (Mr. Merrill, continuing) Mr. Moyle, do you know when that letter, Exhibit 8, was delivered to you?

A. The exact date would be rather difficult for me to state.

Q. It is not dated—give us the approximate time?

A. To the best of my recollection, I would say that that was delivered to me either in February of 1941 or the late fall of 1940.

Q. 1940 or 1941?

A. 1940 or the early part of 1941.

(Testimony of Gilbert Moyle.)

Q. State whether or not it was delivered to you in person? A. It was.

Q. By whom?

A. I think that there were two or three of the committee presented that letter to me together.

Q. You mean either two or three that signed it?

A. Yes, sir.

Q. Do you know their signatures?

A. I think—Mills' signature is more familiar to me than the others.

Q. State whether or not those three men were in the employ of the Idaho Refining Company at the time that this letter was delivered to you?

A. They were.

Mr. Merrill: We offer it. [1339]

Trial Examiner Riemer: The same objection.

Mr. Penfield: Well, I don't think that it is material, anyway.

Trial Examiner Riemer: Mr. Moyle, I am troubled about the date—was Babe Kelso a driver discharged?

The Witness: Yes, sir.

Trial Examiner Riemer: For an accident?

The Witness: Yes, he had a wreck.

Q. (Trial Examiner Riemer): Do you know when that wreck occurred?

A. I think that we could establish that date, yes, sir. It is difficult to state that offhand.

Q. Do you have any recollection of it now?

A. My recollection would be possibly a week before that letter was written. I know that it was

(Testimony of Gilbert Moyle.)

immediately brought to the attention of the Employees Association and the committee met with me.

Trial Examiner Riemer: It may be admitted and marked in evidence as Respondent's Exhibit 8.

(Whereupon the document hereinabove referred to was marked and received in evidence as Respondent's Exhibit No. 8.)

RESPONDENT'S EXHIBIT No. 8

To Mr. Gilbert Moyle, General Manager
Idaho Refining Company

We, the undersigned grievance committee, find the Company justified in the action they have taken in regard to Babe Kelso, driver. We do find, however, that there is a great deal of misunderstanding between drivers and shopmen, and we feel that by having a check-sheet, the drivers can put in writing the condition of their trucks when brought in. We also suggest a check card from the shop showing the truck has been serviced and repaired and is in condition to run.

We find that trucks are in need of horns, and fog lights. We feel that this is good for both Company and drivers, and that brakes, lights and horns are very good insurance policies.

We feel that a meeting of drivers and shopmen is necessary once a month so they can talk over matters that would be conducive to better cooperation.

KAY MILLS,
D. W. SUTTON,
S. R. PAT BURKHOLDER.

(Testimony of Gilbert Moyle.)

Q. (Mr. Merrill): Kelso had been discharged prior to the time that this letter had been written to you, of course? A. Yes, sir.

Q. And you recall the fact that he was discharged? A. Yes, sir. [1340]

Q. Now, you mentioned some contract covering wages that you had with the Association?

A. Yes, sir.

Q. Will you explain how the matter was presented to you—the first contract?

A. The contract of June 1, 1941?

Q. Was that the first written contract that you had touching wages? A. Yes, sir.

Q. Explain how it was presented to you, and how you acted upon it?

A. A committee from the Employees Association presented us through their superintendent with a proposed wage agreement. We considered this agreement and made recommendations as to the rate of pay back to the committee for the Association to consider.

Q. And then what was done?

A. They considered it and had their committee sign the agreement.

Q. What, if anything, did you have to do, or the company have to do with the preparation of that agreement? A. Absolutely nothing.

Q. Do you know who prepared the statement?

A. I do not.

Q. Who presented the agreement to you? [1341]

(Testimony of Gilbert Moyle.)

A. I think that the agreement was presented to me by Mr. Peters.

Q. I believe that you did not sign the first agreement? A. I think that that is correct.

Q. What did you do with the agreement after it had been presented to you, did you present it to the officers of the company?

A. It was made the topic of discussion, yes.

Q. And presented to the officials who did sign it?

A. Yes.

Trial Examiner Riemer: Off the record.

(Discussion off the record.)

Trial Examiner Riemer: On the record.

Q. (Mr. Merrill): Mr. Moyle, in what manner was the request for a change in wages presented to you by the committee of the Association?

A. It was a list of the employees and the wages that they were receiving and the wages that they wanted.

Q. Was that submitted with the agreement or before the agreement?

A. That was submitted before the agreement.

Q. Now, after you had received that list and those changes that the employees desired and which the employees requested, what did you do?

A. We took the matter up with our superintendent and other [1342] officers and gave them the wage scale that we proposed.

Q. Was the proposed wage scale that you submitted to them a change in the wages that they had theretofore been receiving?

(Testimony of Gilbert Moyle.)

A. It was an increase, yes, sir.

Q. How did the increase which you submitted compare with the increase which they requested?

A. We more than met the increase halfway.

Q. More than halfway? A. Yes, sir.

Q. Did you go the full limit with any of the requested increases, if you recall?

A. Yes, we did.

Q. In what respect?

A. I think that our welder—I am not right positive, it is kind of hard to recall those exact prices, but I am certain that there was one or two on this list that we gave the suggested wage scale of the Association. However, in most cases we submitted a wage scale we thought was fair.

Q. After you had submitted this proposal covering wages, which was a counter to their proposal, what was then done?

A. They presented us with an agreement embodying in the agreement the suggested wage scale that we had submitted.

Q. Was that the agreement that was then later signed? A. Yes, sir.

Q. And I believe that you said that you did not know who prepar- [1343] ed that agreement?

A. I certainly did not.

Q. Then were the wages increased in accordance with that agreement? A. Yes, sir.

Q. How long did that agreement remain in effect? A. Until June 1, 1942.

Q. Over what period of time was that?

(Testimony of Gilbert Moyle.)

A. One year.

Q. What then occurred, if anything, with reference to wages?

A. About May 20, the Committee met again with me and asked me to consider the wage agreement situation for the coming year. They had with them a sheet, listing all of their employees and the suggested wage scale that they thought should be used for the coming year.

Q. And what was done when that was submitted?

A. I took it up again with our superintendent, and with other officials, such as Henry Moyle and Dr. Leslie, and we concluded to submit the wage scale which I did.

Q. Did you take it up with Mr. Sheets?

A. Yes, sir.

Q. He was the president of the company?

A. Yes, sir.

Q. Did you make a counter-proposal at that time?

A. Yes. The counter proposal was about as I suggested. We met [1344] this price increase better than 50 per cent. with this recommendation, that we knew the cost of living was going up and the things were changing rapidly, and I suggested to the committee that we make this agreement for six months rather than for a full year, that at the end of six months, they might want to submit a new wage scale which would conform with the high cost of living which was advancing rapidly.

(Testimony of Gilbert Moyle.)

Q. What was the result of that suggestion?

A. They took it very kindly and accepted our suggested wage scale.

Q. Did they adopt your suggestion touching the time of the contract? A. They did, six months.

Q. I believe you then signed this later contract?

A. I did.

Q. After you had submitted to the committee this proposal, was a contract thereafter presented?

A. Yes, sir.

Q. Did you have anything to do with the drafting of that contract? A. No, sir.

Q. Do you know who did draft it?

A. No, sir.

Q. Did the contract that was submitted to you contain the wage increase that was contained in your submission? [1345] A. Yes, sir.

Q. Who was it that served on the first committee that presented to you the wage schedule in 1941—June, 1941?

A. My recollection, there was John Anderson, K. Mills, and I think that there were four on that committee—I can't just offhand remember the other two members.

Q. Who were on the committee that submitted the proposal to you in June, 1942?

A. Mr. Peters brought the information in to me—the president, I think.

Q. Of the Association at that time?

A. Yes, sir.

(Testimony of Gilbert Moyle.)

Q. Now, on the first agreement submitted to you, and which was signed by the company, I observe that the truckdrivers are not listed, while they are listed on the second agreement, is that the fact?

A. That is correct.

Q. Will you explain that?

A. We made our arrangements with the truckdrivers previous to June 1, which was satisfactory with the truckdrivers and complied with their wishes. [1346]

Q. Now, do you know a man by the name of Thomas Brandt? A. Yes.

Q. When did you first become acquainted with him? [1352]

A. My first real contact with Mr. Brandt was in the summer of 1939.

Q. Was that before or after a meeting on the Refining Company property at which Mr. Rosqvist and Mr. Brandt were present?

A. Well, I am not certain of that date.

Q. Whether it was——

A. Before or after. I know that Mr. Brandt called me in August of 1939.

Q. What was the purpose of the call?

A. Mr. Brandt said that he understood that we were doing some new constructing at the plant, and wanted to talk to me, and I said "Fine, come on out."

Q. Did he come?

A. He came out immediately.

Q. What was the conversation about?

(Testimony of Gilbert Moyle.)

A. He asked me about the construction that we were going to do, and within a very few minutes, we agreed that any new construction at the plant, that he would allow the union craftsmen of Pocatello to do it and work alongside our employees.

Q. What was done by way of following that up?

A. That was followed up immediately, and we hired bricklayers and so forth at the plant to construct the work that we had under consideration.

Q. What was the understanding with reference to future construction? [1353]

A. We also agreed with Mr. Brandt at that time that any future construction, new construction, we would let the union craftsmen do it.

Q. That would be strictly a union job?

A. Yes, sir.

Q. What did you do in response to that understanding, on new construction thereafter?

A. Well, we had one piece of construction there, an asphalt plant, we spent \$60,000 on.

Q. How was that constructed?

A. That was constructed all by union labor.

Q. And next?

A. We constructed a third boiler and boiler house in addition to our steam capacity at the plant that was all done——

Q. What was the size of that construction work?

A. That is quite a large construction job. It is around 150 or 200 h.p. boiler, and my recollection is that that job probably cost seven, eight or nine thousand dollars.

(Testimony of Gilbert Moyle.)

Q. State whether or not that was a union job?

A. It was.

Q. Now, next? A. We constructed——

Q. That is, eight or nine thousand dollars was the cost of the construction outside of the purchase of the boiler, I understand? [1354]

A. No, it didn't run quite that high, as far as labor cost was concerned.

Q. What would be your judgment as to the labor cost? A. Well, our records would——

Q. Well, your best estimate?

A. Well, several thousand dollars involved.

Q. All right, take the next one.

A. Built an addition,—we built an addition between the two main furnaces, and that was likewise done by union labor craftsmen.

Q. What was that addition called?

A. I have always called it a super heater—it is an additional furnace, is what it is, to the two furnaces that we have.

Q. What else was done?

A. Well, we had various small jobs.

Q. Directing your attention to the office building, do you recall in addition to the office building?

A. Yes, we spent between two and three thousand dollars on the office building which was built by union labor. That was in 1941.

Q. Now, what was the understanding with Mr. Brandt, if any, touching normal repairs and necessary substitutions?

(Testimony of Gilbert Moyle.)

A. Mr. Brandt agreed with me that we would do our own normal repairs and maintenance with our own crew, without any interference from the Local Unions here.

Q. Now, when these repairs were being made, it is a fact, is it not, that the Idaho Refining Company's employees were working [1355] there over an extended period of time?

A. They were working right together all the time.

Q. With whom?

A. With the union craftsmen.

Q. Did Mr. Brandt ever say anything to you with regard to the truckdrivers at that time?

A. No, sir.

Q. Was any mention made of them?

A. Never a word.

Q. Now, Mr. Moyle, have you personally discussed with any, or asked any prospective employee, whether or not he belonged to a labor union?

A. No, sir.

Q. Have you ever discussed labor unionism with the employees individually? A. No, sir.

Q. Have you ever discussed it with them collectively at any time? A. No, sir.

Q. What has been your attitude in the plant there and as manager of the plant, with respect to labor unionism?

A. Well, I think that it has been very fair. We have attempted to get along with them and work

(Testimony of Gilbert Moyle.)

with them and it was perfectly all right with me, whether they were union or non-union.

Q. Did it make any difference whatever whether they were union or non-union? [1356]

A. No, I have attempted to hold the good-will of the people of this town.

Q. What has been the attitude as to what the employees could do, belong to a union or what?

A. Suit themselves.

Q. Have you ever advised them to that effect?

A. I never advised them either one way or the other. [1357]

Q. Where were these accidents with respect to the items of property covered, with the larger trucks, or with the automobiles or with the smaller units?

A. Oh, I would say 95 per cent. of our losses were with our transports. I think that a record introduced here will show that exactly.

Q. Yes. Where were these transports used?

A. They were used to transport gasoline from our refinery to our customers, from the river to the bulk plants, and from Salt Lake here and here to Salt Lake.

Q. Were they the units driven by these truck-drivers? A. Yes, sir.

Q. Did you ever make any observation touching the speed of these transports upon the highway?

A. Well, I drove every year about sixty or seventy thousand miles.

Q. Yourself?

(Testimony of Gilbert Moyle.)

A. Yes, in my own car, and I naturally would come across a truck driver about every four or five hours a day, and without exception, I can say that they were exceeding the speed which we had asked them to please not do.

Q. Then what did you do with them?

A. I would take it up with their foreman, and tell them that their speed had to be cut down, that they were not only endangering lives and property, but were making short lived the life of [1362] our trucks; they were cutting down the mileage that was in the trucks.

Q. Did you discuss that yourself with the truck-drivers? A. Yes.

Q. What response did you get?

A. Well, I think that our record speaks for itself,—not too good.

Q. To what do you attribute this speed,—why did they engage in it, if you know?

A. Well, there were several reasons. The drivers were anxious to put in as many hours as possible, and naturally, if they were delayed along the way, or took time out at hamburger stands, or visiting, they would make that time up.

Q. Do you know of accidents that were caused by speed? A. Yes, sir.

Q. State some of them?

A. I think most every accident we had was caused by speed—poor calculation of the speed that they were driving.

(Testimony of Gilbert Moyle.)

Q. Now, did you receive a telegram dated November 10, 1941, from these insurance companies?

A. Yes, sir.

Q. Is that the telegram that has been introduced in evidence as Board's Exhibit 22, which I now hand you?

A. Yes, this is the telegram.

Q. What did you do when you received that telegram? [1363]

A. We immediately——

Q. Don't say "we".

A. Idaho Refining Company.

Trial Examiner Riemer: When did you receive it, first?

The Witness: We received that telegram on November 10.

Q. (Mr. Merrill): Whom do you mean by "we"; did not you yourself receive the telegram?

A. Yes.

Q. What did you do?

A. I immediately showed it to Mr. Copening.

Q. Then what did you do?

A. We both immediately started to look for new insurance.

Q. Individually, or collectively?

A. Collectively and individually.

Q. What did you do personally?

A. Naturally I had to call Salt Lake, and notified the president, which he had warned me before that it was coming. It wasn't a complete surprise.

Q. Did you call Gilbert Sheets, the president of the company?

A. Yes.

Q. What is the fact as to whether or not you read him the telegram, or merely quoted the contents?

(Testimony of Gilbert Moyle.)

A. I read him the telegram.

Q. Then what did you do?

A. I thought that we had better get busy and get this [1364] insurance. We had orders to go out and 7 days was a mighty short time to get set up again.

Q. What was the fact as to whether or not you could operate without insurance?

A. We could not operate without insurance.

Q. Why?

A. We were not financially able to operate and carry it ourselves, and the Interstate Commerce Commission rulings would not allow us to operate without it.

Q. What was the next thing that you did after talking with Mr. Sheets in connection with this information in the telegram?

A. We contacted Mr. Turner here in Pocatello, and told him of our situation, and of course he knew it.

Q. What did he say?

A. He said that it looked tough to him, that he doubted if he could help us at all. He certainly could not with the companies that he was representing.

Q. At that time, where was Henry D. Moyle?

A. In Salt Lake—no, I think Henry D. Moyle was in San Francisco.

Q. Do you know when he returned from San Francisco?

(Testimony of Gilbert Moyle.)

A. I think that he returned from San Francisco about the 12th.

Q. The 12th—— A. Of November, 1941.

Q. At that time, what position did Henry D. Moyle hold with the [1365] company?

A. Vice-president.

Q. What other position? A. And counsel.

Q. When did you communicate, if at all, with Henry D. Moyle?

A. Henry D. Moyle came up to the plant on the 13th.

Q. Of November?

A. On November 13, 1941.

Q. In the meantime, between the time that you had received this telegram and the time that Henry D. Moyle came up, what, if anything, had you done in an effort to get insurance?

A. Well, we had called several people, and they were working on submitting the policy to their companies——

Trial Examiner Riemer: You mean insurance brokers?

A. (Continuing): Yes, insurance brokers. We called Idaho Falls, Pocatello and Salt Lake. [1366]

Q. When Henry D. Moyle came up on the 13th of November, 1941, what was done if anything, with reference to the insurance and the contents of that telegram?

A. Well, Henry discussed with me the fact that he had taken the matter up with Mr. Sheets and the insurance agents in Salt Lake had contacted

(Testimony of Gilbert Moyle.)

him, and that it would be absolutely necessary to discharge the drivers.

Q. What did you determine to do, if anything, then?

A. I immediately instructed Mr. Rice to make the necessary arrangements to discharge the drivers.

Q. Did Henry D. Moyle tell you that at the time of his conversation, what determination was arrived at with the president of the company, Mr. Sheets, touching discharge of the drivers?

A. Yes, he did.

Q. What, if anything, did you say with reference to that matter?

A. Well, I said that it was a pretty tough problem, and we had the gasoline to go out, but if it was absolutely necessary, there would be nothing else for me to do.

Q. What did you do? [1367]

A. I instructed Mr. Rice to discharge the drivers and pay them off as they came in off the runs, upon completing what runs they were on.

Q. What day was it that you gave that instruction?

A. That was the afternoon of the 13th of November, 1941.

Q. When was that perfected?

A. I think that it was pretty well completed on the morning of the 14th and through the 14th of November, 1941.

Q. At that time, did you know whether or not

(Testimony of Gilbert Moyle.)

any of these drivers belonged to Local 440, or any other outside labor union? A. No, sir.

Q. Did you know at that time whether or not Archibald belonged to a labor organization or had anything to do with respect to getting members for Local 440? A. No, sir.

Q. Did the affiliation of these drivers, or Archibald or any of them, with any outside labor organization, have anything to do with arriving at your conclusion? A. No, sir.

Q. Was it in any sense considered?

A. No, sir.

Q. Was it known by you? A. No, sir.

Q. So far as you know, was it known by Mr. Moyle or Mr. Sheets or any other officer of the company? [1368]

A. I am sure it wasn't.

Q. Did it enter into the picture at all?

A. It did not.

Q. Did you know a man by the name of Wayne Douglas? A. Yes, I did.

Q. What was he doing?

A. Wayne Douglas was driving a unit for us.

Q. Do you know of an accident that he had about that time, or shortly before?

A. Yes, sir.

Q. Where was that accident?

A. It happened at Weiser, Idaho.

Q. Did you talk to Douglas about it?

A. I did at the time, yes.

Q. Did you go to Weiser?

(Testimony of Gilbert Moyle.)

A. I just happened to be in Weiser. As a matter of fact, I was in Weiser when Wayne pulled out with the truck for Boise.

Q. Did you talk with him?

A. Well, I might have said "hello", at that time.

Q. When he pulled out of where, for Boise?

A. At Baker, Oregon, going to Boise.

Q. Were you at Baker? A. Yes.

Q. Yes, you said when he pulled out of Weiser—

A. No, he left Baker at the time when I was there, going to [1369] Boise with a load of gasoline.

Q. Then when did you get to Weiser?

A. It was several hours after he left a phone call came and said that our truck had cracked up in the residence section of Weiser.

Q. How far is Baker from Weiser?

A. Oh, offhand, I would say that it is 150 miles—no, it wouldn't be that far—possibly less than 100 miles.

Q. Now, did you see Wayne Douglas after you arrived at Weiser?

A. I went over to Weiser, and was immediately directed to the wreck.

Q. Where was it?

A. The wreck was right in the middle of the town of Weiser in the residence section.

Q. How did the equipment appear to you?

(Testimony of Gilbert Moyle.)

A. Well, I can't understand how a driver could get a truck——

Q. Well, pardon me. What was the appearance of it?

A. The equipment was upside down, smashed up against a tree right in the residence section.

Q. Was there a crossroad there?

A. Yes, it was a cross street—it was a residence section—it was split by blocks.

Q. But at the point of the wreck, was it in the middle of the block, or at a cross street? [1370]

A. No, he had made the turn onto the cross street.

Q. What else did you observe of the physical conditions?

A. Of course, the gasoline was running all over the town. It got into the sewers. They were afraid somebody would light up a match, and if so, we would have had the whole sewer system to repair.

Q. Were there any policemen around?

A. Yes, the fire department patrolled the streets for two or three blocks around.

Q. Did you talk to Douglas?

A. Yes, I did. I went directly from the wreck to where they had taken him.

Q. What did he say as to how the accident occurred?

A. He made no bones about saying that it was just fast, reckless driving.

Q. What did he say to you?

A. That's what he told me, when I asked him.

(Testimony of Gilbert Moyle.)

I said, "How in the world could you dump a truck up in the middle of Weiser?"

Q. What did he say?

A. He said it was just fast, reckless driving.

Q. Did he say where he had been?

A. I said to Wayne, "What in the world are you doing in Weiser, you are supposed to go through to Ontario", and he said, "Oh, I have a sister and a girl friend here."

Q. Did you say anything about the discharge of Douglas at that [1371] time?

A. When I left the house, Earl Stiff was with me, I said, "Lay him off, fire him right now, I am through with such driving."

Q. Explain the relationship of Stiff?

A. He was the manager for us at Baker, Oregon, with our truck operation from the Columbia River into the Boise area.

Q. What was the relationship between Stiff and the truckdrivers?

A. Well, Stiff was our manager there, and employed the truckdrivers and hired and fired them at his will.

Q. What was the relationship between the Idaho Refining Company and him with reference to truckdrivers?

A. Mr. Stiff had these two trucks in the beginning, and we purchased them. We gave Mr. Stiff stock in our company for the trucks.

Q. Was there a period of time when Stiff had control over them? A. Yes.

(Testimony of Gilbert Moyle.)

Q. What was that?

A. The period was from October 10 approximately, until the river closed, about January 5 of 1942.

Q. Then he had the power to control Wayne Douglas?

A. Oh, yes; he had power to hire and fire him.

Q. Was Wayne Douglas discharged by Stiff, if you know? A. He was.

Q. That was when? [1372]

A. He was discharged immediately upon Stiff's return to Baker.

Q. How long was that after the accident?

A. I would say that it was the next day or two days. I was not at Baker at the time that he discharged him.

Q. (Trial Examiner Riemer): When was this accident at Weiser?

A. To the best of my knowledge, the accident, I haven't looked it up on our records, it was the 20th of October.

Q. (Trial Examiner Riemer): And Stiff discharged Douglas?

A. I wasn't there. It is my understanding that Stiff did. He should have discharged him the next day if he followed my instructions.

Q. (Mr. Merrill, continuing): Did you later learn that he was re-employed?

A. Yes, I did through our office, at Pocatello.

Q. When did you get that information?

A. That information came to my attention, well,

(Testimony of Gilbert Moyle.)

I would say that it was somewhere around about the 16th of November—maybe the 17th.

Q. After the other truckdrivers had been discharged? A. Yes.

Q. What did you do when the matter thus came to your attention?

A. I got in touch with Frank Copening and told him that I couldn't understand why Wayne Douglas was back on our payroll.

Q. Was he then discharged the second time?

A. I think that finally Mr. Stiff himself concluded that for the [1373] best of the service, they let him go.

Q. Why was Wayne Douglas discharged?

A. I think that it was because of this wreck entirely.

Q. Did his discharge have any connection with the discharge of the other truckdrivers on the 14th of November? A. No, sir.

Q. Did you know a man by the name of Archibald? A. Yes, sir.

Q. How long have you known him?

A. Well, I guess that I knew him from the time that he started work.

Q. Where did he work?

A. He worked in our garage.

Q. Had you ever observed him at his employment?

A. Well, when I am in town, which is not too often, I am in the garage at least once or twice a day.

(Testimony of Gilbert Moyle.)

Q. Were any complaints made to you touching the conduct of Archibald?

A. Yes, I had complaints from Brown and Mr. Rice that he was laying off too often and had been drinking.

Q. Whom do you mean by Brown?

A. Brown was in charge while Rice was out of the garage.

Q. Is he the man who testified here yesterday?

A. Yes.

Q. What did you do with reference to those complaints? [1374]

A. I told Mr. Rice that I didn't see why he put up with him any longer.

Q. What did Rice say?

A. Rice said, "As soon as we complete the work that we have on hand, we will get rid of him."

Q. When did Rice say that to you?

A. I think that was somewhere around the first of November.

Q. Did you have any conference personally with Archibald? A. No, sir.

Q. Was there any effort made on his part to have a conference with you?

A. Yes, he called me one day from the shop and said that he would like to see me.

I said, "I am busy, and I guess you are, why don't you come in after 4:30 or five o'clock when I am not busy?" And he said that he would, and that is the last that I ever heard of him.

Q. Did he come? A. No.

(Testimony of Gilbert Moyle.)

Q. Did you ever have any other telephone call from him, or any information submitted to you by any office employee of his other calls?

A. No, and I was in the garage continuously, probably once or twice a day after that while I was in town.

Q. Thereafter? [1375] A. Yes.

Q. Did he ever approach you—

A. He never approached me at all about the conference, whatever.

Q. Did you have any information of any union activity engaged in by Archibald?

A. No, I didn't know that he was a member of a union.

Q. Did you know that he was discharged—I mean to say prior to his discharge, did you know that he was to be discharged at any particular time?

A. I knew that he was going to be discharged, yes, from about the first of November. I didn't know that he was going to be discharged on the day that the drivers were discharged.

Q. Who did the discharging of Archibald?

A. Kermit Rice.

Q. Did you know of the incident prior to its happening, or was it reported to you after?

A. Reported to me after.

Q. By whom? A. By Mr. Rice.

Q. Now, Mr. Moyle, do you recall an incident when Mr. Brandt and Mr. Thompson came to the refining company office on November 14, 1941?

(Testimony of Gilbert Moyle.)

A. Yes, sir.

Q. Had you seen Mr. Thompson before that day?

A. I don't believe that I ever had. [1376]

Q. Did he come into your office?

A. No, they came into Mr. Copening's office.

Q. Were you and Mr. Copening in Mr. Copening's office when they came in? A. Yes.

Q. Relate what was said and done?

A. I said nothing, and Mr. Copening said to the gentlemen, "What do you want?" And they said, "We have a blank contract here that we would like to have you look at."

Q. Who did the speaking?

A. I think that it was Mr. Brandt.

Q. What did Mr. Copening say to that?

A. He took the piece of paper and read the contents of it, then he looked up and said, "We will be very glad to consider this and I will take it up with our counsel at Salt Lake."

Q. Did Mr. Brandt make any comment to Mr. Copening about reading that at your leisure, whenever you wanted to?

A. I think that he did, he said it would be all right, "We would like a meeting with you later."

Q. Then what was said, if anything?

A. Well, I think that it was agreed upon to meet about a week later.

Q. Then what occurred, if anything?

A. That was all. They left.

Q. Was there a subsequent meeting? [1377]

(Testimony of Gilbert Moyle.)

A. Yes, this meeting occurred later with Mr. Rosqvist, Mr. Evans and Mr. Brandt.

Q. Where did it occur?

A. That occurred in the company office.

Q. Do you remember the date—could it have been November 21, 1941?

A. I think that was about the time, yes.

Q. Now, I want to go back to the meeting of November 14, at the time Mr. Brandt and Mr. Thompson came into the office, had the truckdrivers been discharged prior to the time Mr. Brandt and Mr. Thompson came to the office on the 14th?

A. Yes.

Q. Had their checks been made out, if you recall?

A. I think that they had all been made out, and a good part of them had been received by the drivers.

Q. Was there any connection so far as you know, between the discharge of the drivers and the appearance of Brandt and Thompson?

A. Well, I don't know that there was. They came out somewhere around noon on the 14th.

Q. Had you ever been apprised prior to that time that the truckdrivers were members of any union?

A. No.

Q. Or Local 440?

A. No. [1378]

Q. Did you know anything whatever about their outside union affiliations?

A. No. [1379]

Q. Mr. Moyle, did Wayne Douglas come to Pocatello after the discharge of the drivers on the 14th

(Testimony of Gilbert Moyle.)

of November, and at the time that he was discharged?

A. I saw Wayne Douglas around the plant, I think, on the 22nd of November or the 21st.

Q. Did you have a talk with him?

A. No more than to say "Hello"; I thought that he had come in to see Frank Copening.

Q. State whether or not you showed Wayne Douglas the telegram which cancelled the insurance?

A. No, I did not.

Q. State whether or not you told Wayne Douglas at that time in substance or effect, that he was discharged for the same reason that the other drivers were discharged?

A. He knew why he was discharged.

Q. I asked if you said that to him?

A. No, I did not. He knew why he was discharged. [1384]

Q. (Mr. Merrill, continuing): Did you say to Mr. Douglas, in substance or effect, that he was discharged for the same reason that the other truckdrivers were discharged?

A. No, I did not.

Q. Did you have any conversation with him touching his discharge?

A. No, sir; I did not, except at the time I was at Weiser with Stiff there was no conversation.

Q. I mean with Douglas? A. No, sir.

Q. Do you recall of knowing a man by the name of Trevor Moss? A. Yes, sir.

Q. Did Trevor Moss come into the office when

(Testimony of Gilbert Moyle.)

you were present and make application for employment?

A. He came in to Frank Copening's office.

Q. Were you in the office at the time?

A. I was in and out of the office during the day. I think that I was in there a lot of the time while Moss was in these.

Q. Did you engage in any conversation with Moss at any time?

A. I did not, no, sir; Frank Copening did all of the talking.

Q. Was there any request, or questions asked of Mr. Moss as to whether or not he belonged to any labor union?

A. Not while I was there.

Q. Do you know of any such request ever having been made to him?

A. No, sir; I do not. [1385]

Q. Did you ask him any such question?

A. No, sir.

Q. Was there any comment made by you, or in your presence to the effect that, "We",—meaning the refining company—"have a union of our own that they can join at any time"?

A. No, sir.

Q. Did you hear Mr. Moss make any comment touching unionism at all, or whether he belonged to any union?

A. I don't recall that Mr. Moss stated that he belonged to any union.

(Testimony of Gilbert Moyle.)

Q. Was such matter discussed with Mr. Moss in your presence?

A. No, sir; there was not.

Q. Did you ever hear of it having been discussed with him? A. No, sir.

Q. Did you know a man by the name of Loren McBride? A. Yes, sir.

Q. When did you first become acquainted with him?

A. The exact date, I can't set, but we hired McBride at the refinery in let us say, 1940, the fall of 1940, he drove here for us for about a year, I guess, or something like that, maybe a little longer.

Q. Did you have a conversation with him in Boise, or in that locality, on or about the latter part of the year 1941 at the Bulk Sales Plant?

A. Well, I recall I was in Boise, I have been going over about [1386] once every two weeks, and I occasionally see the drivers there unloading, and say "Hello", and I wouldn't doubt but what McBride was correct.

Q. Do you recall a conversation with him in which the question of membership in a labor union was discussed?

A. I had no conversation outside of the fact that I might have said "Hello, where are you going with your load?" or "When are you leaving?"

Q. Did you observe him at any time with a union button on him?

A. I wouldn't know a union button if I would see one.

(Testimony of Gilbert Moyle.)

Q. I will ask you if you ever at any time said to him, or did say to him at the bulk plant in Boise, about the first of October, 1941, that, "The wearing of that button is not going to do you any good with our bunch"? A. Absolutely not.

Q. Did McBride say at that time, or any other time, "What if we get your bunch to join?" To which you replied that you would fire every one of them? A. No.

Q. Did you have any such conversation?

A. No.

Q. In substance or effect?

A. Absolutely not.

Q. Did you say in substance or effect, in response to a question purported to have been asked by McBride, "What are we going to do [1387] for drivers?" and to which he said that you replied, "I can get drivers or I will get old women to drive"?

A. That is a funny statement—no.

Q. Did you make any such statement?

A. No, of course not.

Q. Was the subject matter upon which these questions have been asked, ever discussed between you and Mr. McBride?

A. No, it is a fairy story.

Q. Did you ever discuss with McBride the subject of labor unionism?

A. No, sir; I didn't.

Q. Or membership of any employee in the union?

A. I knew McBride was a member of the union.

Q. You did know that? A. Yes.

(Testimony of Gilbert Moyle.)

Q. Did it make any difference to you?

A. No, certainly not. I knew that he worked here, knew our men and they were personal friends, and I knew when I brought him over here, that he was a union man coming back to his friends, and it made no difference to us.

Q. Mr. Moyle, state whether or not the Idaho Refining Company since before March, 1940 on various, or any occasions, through you, restrained or coerced any of its employees in the exercise of their right of self-organization or bargaining collectively through representatives of their own choosing? [1388]

Mr. Penfield: I object to that on the ground that it calls for a conclusion.

Trial Examiner Riemer: Let the witness answer.

A. No.

Q. (Mr. Merrill, continuing): Have you ever attempted to discourage membership in Machinists Local 198 or Teamsters Local 440 or 983?

A. No, sir.

Q. Or either of them? A. No sir.

Q. Or any other labor organization?

A. No, sir.

Mr. Penfield: Let the record show that we have the same objection to all those questions?

Trial Examiner Riemer: Yes.

Q. (Mr. Merrill, continuing): State whether or not since November 14, 1941, you as general manager of the Idaho Refining Company have inquired of persons applying for employment as truck driv-

(Testimony of Gilbert Moyle.)

ers and of said employees hired as truck drivers, whether or not they belonged or had belonged to the Teamsters Union or to any other outside labor organization? A. I have not.

Q. Have you ever advised such persons, or any other persons, that the company was opposed to membership of such employees in such unions?

[1389]

A. No.

Q. I believe that you have testified heretofore, have you not, that you had nothing whatever to do with the organization of the Association?

A. That is correct, yes, sir.

Q. And have never had any membership in it or any connection with it? A. No, I haven't.

Q. Mr. Moyle, state whether or not in June, 1941 the Idaho Refining Company through you as its manager caused a meeting of the membership of the Association to be held in order to discourage or defeat concerted activities of the employees acting independently of said Association?

A. I did not.

Q. Or that you dominated or interfered with the conduct of said meeting? A. No, I did not.

Q. Did you have any knowledge of any such meeting?

A. No, except when the committee approached me in June with their recommendations for their Association.

Q. Was that a meeting of the Association, or a meeting of the committee from the Association?

(Testimony of Gilbert Moyle.)

A. It was a meeting of the officers or committee from the Association.

Q. What is the fact as to whether or not you caused a meeting of [1390] the Association, or membership of the Association to ever be called or held?

A. No, I have never.

Q. And state whether or not you have ever met with the membership of the Association in a meeting assembled? A. I have not. [1391]

Cross Examination

By Mr. Penfield:

Q. Mr. Moyle, with respect to this agreement which was signed in June, 1941, with the Association, did I understand you to say that you met with a committee that presented you with a wage scale, and then you turned over that wage scale to the other officials of the company?

A. We discussed that wage scale with the other officials, and with the superintendent and came to a conclusion on the wage we thought would be fair.

Q. Now, this was not a committee of the Association, isn't that correct?

A. We didn't discuss with the committee our proposal, no, we just handed them a final figure that—

Q. No, that isn't the question. Do you know whether this committee you met with was a committee of the Association or not? A. Yes, I do.

Q. Was it a committee of the Association? [1392]

A. Yes.

(Testimony of Gilbert Moyle.)

A. (Continuing): As I recall, that was a committee of the Association, and my mind runs back now, I think Max Pope was a member of that committee, and he was secretary of the Association at that time, so I know that it was a committee of the Association.

Q. Did they tell you that they were representing the [1393] Association?

A. Yes, and Max Pope was secretary of the Association, as I recall now, and he was on this committee.

Q. This meeting was sometime in May, was it not, 1941? A. It was before June 1.

Q. Was this the only meeting that you had with a committee of any sort?

A. Well, for what purpose?

Q. For the purpose of discussing wage increases.

A. You mean before June 1?

Q. Yes. A. Yes, at that time it was.

Q. The next meeting you had was a meeting that you had with the membership or with the members?

A. I didn't meet with them.

Q. Isn't it correct that you attended a meeting in the office shortly before June 1, Mr. Moyle, at which a substantial number of the employees were present, and at that time you set forth the proposals of the company with respect to the wage rates?

A. No, the proposal was just handed to the committee, and they acted on it.

Q. You did not attend that meeting?

(Testimony of Gilbert Moyle.)

A. I didn't attend any meeting of the Association since I have been there at the plant.

Q. You didn't appear in the meeting to give the Company's [1394] answer, is that what you mean?

A. That is exactly what I mean; I didn't attend any of their Association meetings.

Q. To whom did you give the company's reply?

A. This committee.

Q. The same committee that visited you before?

A. The same committee that brought the information—the recommendation from the Association.

Q. But those were the only two meetings that you had with that committee, is that correct?

A. You mean of June 1?

Q. I mean the meeting at which they presented a schedule, and the meeting at which you gave them your schedule?

A. We had the two meetings in regard to the June 1 wage scale.

Q. And they accepted the schedule as you presented it, is that correct? A. Yes.

Q. And that was embodied into the agreement?

A. Then they brought an agreement back——

Q. You suggested that they draw up an agreement embodying that? A. Who suggested it?

Q. You suggested it, didn't you?

A. I think that it was mutually agreeable that we have the agreement in writing.

Q. I asked you—— [1395]

A. I don't know that I did, no.

(Testimony of Gilbert Moyle.)

Q. It was following the signing of this agreement that you had a meeting with the truckdrivers, was it not?

A. We had several meetings following that.

Q. I mean a meeting at which you discussed a change in the wage scale of the truckdrivers?

A. We had several meetings.

Q. Well, did you have a meeting following this meeting with the committee?

A. We had a meeting and several others.

Q. Was this the meeting where you spoke of and discussed the wage scale, and a new wage scale was announced?

A. The wages were finally discussed with Mr. Copenig, and with the truckdrivers—not myself.

Q. Who announced the change from the hourly to the monthly scale? A. Mr. Copenig.

Q. You did not attend that meeting?

A. No, sir. [1396]

Q. So, when this contract was entered into, although the scales were set after the truckdrivers' names, there was no negotiation for upward revision for the truckdrivers?

A. There was no change in their wage at that time, correct.

Q. And was that the only meeting—were these two meetings that you refer to with Mr. Peters the only meetings that you had with the representatives of the Association with respect to the negotiation of this contract?

A. I didn't get the last of your question.

(Testimony of Gilbert Moyle.)

A. The only reason for not answering it was that we worked thru Turner, who was the agent of the writer of that letter.

Q. But you didn't take any steps?

A. Oh, yes, we did, absolutely.

Q. What steps?

A. We took every step possible out there that we knew of to stop the continuance of accidents.

Q. Well, what was every step that you took?

A. As I have suggested, admonishing the people in control, Frank Copening and Kermit Rice, to talk to the drivers, and we spent about \$15,000 last year on a new garage for one simple purpose—to try to give better service and try to put the trucks in better condition and eliminate any possible chance of this [1409] cancellation of the policy and so forth. They were going to rate us up, that is another thing, and I was concerned about that. We were paying a big rate, and they were talking about putting it up.

Q. As a matter of fact, no concrete program of any kind was attempted until after the first of this year, is that correct?

A. No, it is not correct.

Q. You stated that you made personal observations of the drivers on the road, and observed that they were driving at excessive speeds. Did you make any records of who the drivers were, how fast they were going—

A. I think that in practically every case I took it up upon my return to the plant with Mr. Rice

(Testimony of Gilbert Moyle.)

and Mr. Copening and asked them to be sure they followed through on my recommendation.

Q. What did you recommend?

A. That they cut the speed down. We recommended governors on all the trucks, and I think that they were on all the trucks.

Q. You didn't keep any record of the number of times that you observed this, or the particular drivers involved?

A. It was so many times on the road, that I can't set any figure to it.

Q. But you didn't keep any records?

A. You mean as to the number of times that I saw the trucks on the road? [1410]

Q. That is the question that I asked.

A. No, I didn't—of course not. [1411]

Q. How did it happen that the drivers were discharged on the 14th instead of at least letting them finish out the pay period which ends on the 15th, as I understand it?

A. Well I think it was the thought of Henry Moyle, and I think that he can possibly answer that. You had better ask him.

Q. Do you know how it happened?

A. No, I don't.

Q. Was it discussed at your meeting?

A. It was discussed that we were going to change our drivers in order to comply with the new carrier.

Q. Was the question of discharging them on the 14th, as opposed to the 15th, discussed at all?

(Testimony of Gilbert Moyle.)

A. I don't get that question.

Q. How does it happen that they were discharged on the 14th rather than letting them work through their pay period?

A. Because we were instructed by Henry Moyle on the 13th.

Q. I asked you if the question of carrying them on through the 15th was discussed at your meeting with Henry Moyle? A. I don't think so.

Q. Now, with respect to Mr. Douglas, did I understand you to say that you instructed Mr. Stiff to discharge him? A. I did.

Q. And that was on the day of the accident?
[1412]

A. Yes, sir.

Q. Which occurred, I believe, on October 16?

A. At Weiser, yes.

Q. And you knew, did you not, that Mr. Douglas resumed work by the 29th of October and continued to work steadily thru until the 21st of November of the 20th of November?

A. No, I didn't.

Q. He was on the payroll of the Idaho Refining Company, wasn't he?

A. I have later found that out. You see those payrolls came in from Baker, I think, twice a month, as I recall, and I don't examine them on every payroll date, so it wasn't, I think, until the 21st that I found that Wayne had been on our payroll again.

(Testimony of Gilbert Moyle.)

Q. You never had any further conference with Mr. Stiff in regard——

A. Not in regard to Wayne, no. [1413]

Q. Touching the decision to discharge the drivers, concerning which you have been questioned, when Henry Moyle came up from Salt Lake City, state whether or not you were informed that that decision to discharge the drivers had already been made by Mr. Moyle and Mr. Sheets?

A. I think it had.

Q. So you were simply advised——

A. I was advised to discharge them, and I went ahead and did so. [1419]

Q. (Trial Examiner Riemer): Can you state generally the ICC rule governing the insurance of transport trucks?

A. No, I can't.

Q. May I see Board's Exhibit 7, Mr. Moyle, can you recall and give me a list of the supervisors, those who possessed supervisory authority at the Idaho Refining Company in October, 1941?

A. I believe that I can.

Q. Start from the bottom and go up, or from the top and go down.

A. We will start with the top.

Q. I would like to have you fix it, if you can, about October, 1941.

A. I think I can.

Q. All right.

A. We will start with Mr. Miller, the plant superintendent.

Q. What is his first name?

(Testimony of Gilbert Moyle.)

A. What is his name? W. M. Miller, and under W. M. Miller, we had E. V. Smith.

Q. What was he?

A. He was assistant to Miller, and we had Mr. Simpson, who was our yard foreman—Victor Simpson, I think; and we had Mr. Farnsworth who was in charge of our laboratory who assisted the superintendent some. That pretty well takes care of the [1420] set-up there. Then we had Mr. Henninger, who was in charge of the treating and loading dock. We had Mr. Rice in charge of the garage. That pretty well completes it except our office force. We had in the office mainly Mr. Copening under myself.

Q. Frank Copening?

A. Yes, Captain Frank Copening.

Q. He was the assistant secretary?

A. He was my assistant secretary, yes.

Q. And you were the general manager?

A. Yes.

Q. And Mr. Sheets?

A. Mr. Sheets was our president.

Q. And Henry Moyle? A. Vice-president.

Q. Now, Mr. Moyle, come down to the fall of 1942, did that list differ?

A. A little bit, yes.

Q. What was the changes?

A. Mr. Miller isn't with us any longer. Mr. E. V. Smith was advanced to superintendent. In the garage, we have given Mr. Rice an assistant—Mr. Sheets.

(Testimony of Gilbert Moyle.)

Q. What is his first name, is that Heber Sheets?

A. Yes, Heber Sheets.

Q. What do you call him?

A. Well, Heber Sheets is taking care of the time records and [1421] time cards, assisting in the student trips with drivers, and taking care of the store or storeroom.

Q. Are there any other changes in that list?

A. Yes, Mr. Sheets is no longer president.

Q. And that office has not been filled?

A. No. I think that list remains the same with the exception that Mr. Farnsworth is assisting Mr. Smith more than he assisted Mr. Miller, and he is assistant superintendent.

Q. Was Copening still secretary in June, 1942?

A. Yes, I believe that he left on the 10th and up to the 10th he was still an officer.

Mr. Penfield: I believe there was one omission in that list. I don't believe you had the office of treasurer.

The Witness: Albertson is now our treasurer.

Q. (Trial Examiner Riemer): Who was treasurer in 1941?

A. In 1941, Mr. Peterson was.

Q. Is that John H. Peterson?

A. John H. in 1941, and Bert Albertson is now.

Q. Who owned the trucks that were driven out of Baker, Oregon, Mr. Moyle?

A. We owned the trucks from October 1 until I think about April of this year.

Q. And how many were there?

(Testimony of Gilbert Moyle.)

A. We had three, I think, and possibly a fourth.

Q. Was that in addition to the truck driven by Douglas?

A. We had two others in addition to the truck driven by Douglas. [1422]

Q. Were any other truckdrivers up at Baker discharged in November?

A. No, I think that was the only difficulty we had on that, on wrecks.

Q. Douglas was the only one discharged?

A. I think so.

Q. Nevertheless, those trucks driven out of Baker, including Douglas' truck, were covered by this policy?

A. Yes, all covered by our policy, yes, sir. [1423]

Q. All right, can you tell me, Mr. Moyle, who it was that requested a check-off on Association dues? A. I don't get that question.

Q. When was the Association first granted a check-off of Association dues—do you know what a check-off is?

A. No, I don't think that I get that question—you mean deduction of dues from the payroll?

Q. Yes, from the payroll.

A. I am afraid that I can't answer that. It seems to me that it has been going on some time from the start. I can't tell you that.

Q. Do you know who requested it?

A. I think that the Association members themselves, and signed slips to that effect, as I understand it.

(Testimony of Gilbert Moyle.)

Q. Yes, that is true, the Association members evidently do authorize this check-off. What I am asking you, however, is, who on behalf of the Association requested the permission to make that deduction?

A. I think that the facts of the case are that the officers of the Association asked our company if that could be done.

Q. Do you know who granted that request—what officer?

A. No, I don't. I think—I don't recall it brought to my attention, but I know that we did have—we would have to have some reason for it—

Q. You don't know who that was? [1426]

A. It seems to me that it has been going on from the beginning.

Q. That would carry it back to 1938?

A. Yes, I think that it does.

Q. Do you know if at the time that that check-off was requested there was any demand that the Association show a majority of its right to represent all of the employees?

A. No, I just think that we assumed that they represented a certain number—I didn't know how many.

Q. When you negotiated the contract with the Association in June of 1941, did you demand any proof from the Association as to its right to represent the employees?

A. Well, I knew from what Mr. Peters said,

(Testimony of Gilbert Moyle.)

that he was their president, and he did have that authority to present this schedule.

Q. You knew that John Evans was a truck driver—— A. Yes.

Q. On November 21, didn't you? A. Yes.

Q. Or had been a truckdriver? A. Yes.

Q. And a former employee? A. Yes.

Q. Did you ask the Association officers in June of 1941 to prove their majority?

A. No, I don't think so. I knew from the committee that called [1427] on us that they stated that they represented the majority.

Q. That did state that? A. Yes.

Q. Did you ask for any proof or confirmation?

A. No, I didn't ask for any written proof. We asked, "Do you represent the majority of the Association", and they said "Yes".

Q. When the contract was renewed in June, 1942, did you at that time question the Association representatives with respect to their right to represent either their members or a majority of your employees?

A. Mr. Peters came in and said that they represented the Association, and their decision to present this schedule of wages.

Q. And you accepted that?

A. I accepted that as their having the right to do so. [1428]

Trial Examiner Riemer: Thank you. That is all.

(Testimony of Gilbert Moyle.)

Redirect Examination

Q. (Mr. Merrill): Have you had occasion to pass any of your trucks being driven at such a speed?

A. Yes, I have, on numerous occasions.

Q. Have you observed the speed on the speedometer of the car that you were driving?

A. Yes, I have.

Q. And by that, could you tell the speed of these trucks? A. Yes, very distinctly.

Q. Has that happened more than once?

A. Yes, many times.

Q. Mention some of the speeds that you have observed. [1434]

A. I have passed the boys going from 45 miles up to 65, possibly even 70. I would say 65 would be a maximum speed.

Q. If the drivers speeded, what is the fact as to whether or not they would get to their destination quicker and have more leisure time?

A. Oh, yes, they would; sure.

Q. So a matter of speed would be of advantage to them? A. Yes.

Q. What is the fact as to whether or not the speed would increase their loitering time?

A. It would.

Trial Examiner Riemer: Repeat that question.

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

Q. (Mr. Merrill, continuing): Where they

Respondent's Exhibit No. 10—(Continued)

Get the names and addresses of all material witnesses and give the Company's representative all possible cooperation. Report theft losses to Police.

The Company has claims offices in all important Cities and is equipped to render prompt service throughout the United States and Canada.

Prompt Notice To The

Company Will Insure

Immediate Service

[Cut]

Respondent's Exhibit No. 10— (Continued)

CLASSIFICATION OF MOTOR VEHICLES COVERED ON FIREMEN'S METROPOLITAN CASUALTY INSURANCE COMPANY—No. F.M.227

Passenger Cars		Light Trucks (1½ Ton or Less)		Heavy Trucks 2 Tons or more (in excess of 2500 Gal.)		Trailer and Semi-Trailers	
Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle
1.	Oldsmobile Sedan (1937)	6.	Replaced by Ind. 11 Studebaker Truck (1937) (Motor #168863)	8.	Internat'l #25 Trk. #1932 3240 Gal. Tank	21.	3000 Gal. Tank Semi-Trail. #11 (1939)
2.	Dodge Tudor Sed. (1935)	7.	Internat'l ½ T. Panel Truck (1938)	9.	Replaced by Ind. #11 White 4 Ton Truck—Mod. #719940 (1936)	22.	3000 Gal. Tank Semi-Trail. #12 (1939)
3.	Packard Convert. Coupe (1939)	13.	Internat'l D-30 Pickup #13 (1940)	10.	Diamond T 2½ Ton Trk. (1938)	23.	3050 Gal. Tank Semi-Trail. #9 (1939)
4.	Buick Coupe (1940)	17.	Ford 1½-Ton Panel Truck (1940)	11.	Internat'l DS35 Gas Truck (1939) #11	24.	3000 Gal. Tank, Semi-Trail. #22 (1939)
5.	Cadillac Sedan Model "6109" (1941)	18.	Ford 1½-Ton Panel Truck (1940)	12.	Internat'l DS35 Gas Truck #12 (1939)	26.	3800 Gal. Tank, Semi-Trail. #7 (1938)
50.	Buick Sedanet (1941)	35.	GMC 1½ Ton Model T18D (1936)	14.	Internat'l DS50 #14 (1940)	27.	3500 Gal. Tank, No. 17 Trailer (1940)
66.	Buick Sedan 2-Dr. (1941)	40.	Dodge 1½ T. Truck #25 (1940)	15.	Mack 4 to 5 Ton Truck #16 (1940)	28.	4250 Freuhof Tank Trail. #14 (1940)
Ind.	Pontiac Coupe (1941)	41.	Ford 1½ Ton Truck #10 (1939)	16.	Mack 6 to 7 Ton Tractor Type Trk. (1940)	29.	4640 Gal. Freuhof Semi-Trail. #16 (1938)
6		43.	Ford 1 Ton 300 G. Tank Trk. (1939)	19.	Internat'l DS 50—3 to 4 Ton (1940)	30.	4250 Gal. Freuhof Tank Trail. #20 (1940)
		44.	Ford 1½ Ton Trk. 300 Ga. Tank (1941)	20.	Internat'l DS 35—2 Ton Trk. (1940)	31.	3500 Gal. Tank #8 Olson Semi-Trail.
		45.	Ford ¾ Ton Express Truck (1940)	25.	Internat'l DR 60 Trk. #7 (1939)	32.	5000 Gal. Freuhof Trail #26 (1941)
		46.	GMC 1½ T "AC102" Pickup (1940)	33.	White Tank Truck Model 750T #28 (1941)	36.	Kingham 3500 Gal. Tank Semi-Trailer Mod. T300 #17 (1941)
		47.	GMC 1½ Ton Tank Trk. "AC303" (1940)	34.	Mack Tractor Type Tnk Mod. Lft. #26 (1941)	37.	3000 Gal. Tank Freuhof 6 Wheel Trail. #3 (1940)
		48.	Chev. 1½ Ton Stake Truck (1940)	38.	Mack 5T, 200 Gal. Tank Fuel Trk. Model LRSW (1941)	39.	Flat Back Trailer #23
		49.	Chev. 1½ Ton Truck #24 (1939)	51.	Replaced by Ind. #15—Ford 1½ T. 2500 Gal. Trk. (1939)	42.	3000 Gal. Tank Semi-Trail. #10 (1939)
		52.	Ford 1½ T. Truck 2500 Gal. Tank (1939)	56.	Internat'l 3760 Gal. Tank Truck (1933)	Indorsement #18—Freuhof 5000 Gal. Tank Trailer (1939)	
		53.	Chevrolet 1½ T. Pickup (1931)	Indorsement #9—Kenworth Diesel & Wentwin Semi-Trail (4500 Gal) (1940)			
		54.	Internat'l C30 1½T Truck (1935)	Ind. #10—Fageol Truck & Wintwin Trail (1937)			
		55.	(Replaced by Ind. #14)	Ind. #16—Internat'l Heavy Trk. (1939)			
		Ind. #14—Chev. 1½ T. Pickup (1931)		Ind. #17—Kenworth 4-Ton Truck (1941)			
		57.	Internat'l 1000 gal. Tank Trk. (1936)	Ind. #19—Freuhof 5000 Gal. Tank Trailer (1939)			
		58.	Chev. 1½ Ton Trk. (1939)				
		59.	Chev. ¾ Ton Tank Truck (1938)				
		60.	Chev. 1½ T. 425 Gal. Tank Trk. (1937)				
		61.	Chev. ½ Ton 600 Gal. Tank (1940)				
		62.	Ford 1½ T. Truck 690 Gal. Tank (1940)				
		63.	Chev. 1½ Ton 600 Gal. Tank Trk. (1939)				
		64.	G.M.C. ½ T. Truck 400 Gal. Tank (1939)				
		65.	Chev. 1½ Ton 600 Gal. Tank Trk. (1937)				
		Indorsement No. 7—G.M.C. Stake Body Truck 500 Gal. Tank (1941)					
		Ind. # 8—Ford 1½ T. Truck (1934)					
		Ind. #20—Internat'l 1½ T. Trk—Chassis #4865 (1941)					
Total	8	31		21		16	

Recap—Totals:

Passenger Cars	8
Light Trucks	31
Heavy Trucks	21
Trailers & Semi-Trailers	16
Total Units	76



HENRY D. MOYLE

called as a witness by and on behalf of Respondent, being first duly sworn, was examined and testified as follows:

Trial Examiner Riemer: State your name, please.

The Witness: Henry D. Moyle.

Trial Examiner Riemer: Where do you reside?

The Witness: Salt Lake City.

Direct Examination

Q. (Mr. Merrill): Are you in any way connected with the Idaho Refining Company? [1440]

A. I am.

Q. In what capacity? A. Vice-president.

Q. How long have you been so connected?

A. Since the company was incorporated.

Q. Do you have any other business?

A. Yes, I am a practicing attorney.

Q. How long have you been practicing law?

A. Approximately 30 years.

Q. Where do you maintain your law office?

A. Salt Lake City.

Q. You are a graduate of some university?

A. Yes, the University of Chicago.

Q. What degree did you receive from the University of Chicago?

A. Doctor of Jurisprudence.

Q. What other universities have you attended?

A. Harvard University, and the University of Utah.

(Testimony of Henry D. Moyle.)

Q. I believe that you have been a teacher at the University of Utah Law School for a number of years? A. 25 years.

Q. You are admitted to practice in the State of Utah? A. I am.

Q. Are you admitted to practice in the 10th Circuit Court of Appeals? A. Yes. [1441]

Q. And the Supreme Court of the United States?

A. Yes, I am.

Q. I believe, Mr. Moyle, that you became interested in the Idaho Refining Company at its very beginning, did you not? A. Yes, I did.

Q. And assisted in its corporate organization?

A. That's right.

Q. And in the original contracts for the construction of the plant, is that a fact?

A. Yes, I participated in the drafting of the contracts.

Q. Now, during the period of time that you have been connected with the Idaho Refining Company, have you maintained the position of vice-president during all of that period of time?

A. Continuously.

Q. And as vice-president and general counsel, what duties have you had to perform, Mr. Moyle?

A. Well, generally speaking, I have performed all of the legal service for the company that the company has requested and have consulted with and advised with the president and the manager of the company pertaining to company policies, particularly supervised substantially all of the contracts that

(Testimony of Henry D. Moyle.)

the company has entered into, and have taken charge of and handled, generally speaking, their legal problems including traffic. [1442]

Q. (Mr. Merrill, continuing): The Company was incorporated, was it not, under the laws of the state of Nevada? A. Yes, sir.

Q. And qualified to do business in the state of Idaho as a foreign corporation?

A. That's right.

Q. During the period of time that the company has been in existence, have you been familiar with its problems, particularly with reference to its employees?

A. No, I have had little or nothing to do with the employees of the company or their problems.

Q. Have you had brought to your attention anything touching the attitude of the corporation towards labor unions?

A. Well, I have known what the attitude was generally.

Q. What has that attitude been?

A. One of absolute impartiality. We have had no interest in [1444] anything other than having employees of the company do as they pleased.

Q. Is that the attitude of the company?

A. It is.

Q. State whether or not the company has ever interfered with the employees' absolute freedom in this respect? A. It has not.

Q. What is the fact as to whether or not the corporation or any of its officers or supervisory

(Testimony of Henry D. Moyle.)

employees, so far as you know, have ever influenced or attempted to influence the Idaho Refining Company Employees Benefit & Labor Association?

A. No to my knowledge.

Q. Did any officer have any authority from the corporation to do such? A. He did not.

Q. Mr. Moyle, I wish that you would explain the relationship between the Idaho Refining Company and the Western Gateway Company and the manner and method in which the business between the two companies is transacted. [1445]

A. Well, it is purely one of financing, and in order to obtain financial assistance based upon the warehousing of both refined and unrefined products, in the refinery, we entered into a lease agreement with the Gateway Company, following the same arrangement with the Lawrence Warehousing Company, and in that arrangement, in order to effectuate the bonds which the Gateway is required to carry in favor of the banks who loan against their warehouse receipts, they have to have these employees listed as their [1446] employees and pay them. The bill, however, for the wages that are paid, is sent to the Idaho Refining Company, and they pay them and the employees are to all intents and purposes, so far as their work is concerned; they continued after the arrangement as employees of the Idaho Refining Company the same as they did before the Gateway agreement was made.

The Idaho Refining Company could, of course, discharge or hire new employees to take the place

(Testimony of Henry D. Moyle.)

of the ones who were on the aGteway payroll, subject only to there being no personal objection by the Gateway people. In other words, if we undertook to hire somebody who couldn't get a bond, the Gateway would have had to object, but, so long as we have hired anybody who could qualify on a bond, the Gateway were not interested in whom we hired or whom we fired. And as I indicated in my first statement, I would say that certainly more than nine-tenths of their time is spent in performing services as employees of the refining company, rather than for the Gateway.

Q. Now, Mr. Moyle, is there anything further with reference to the arrangements between the Gateway and the Idaho Refining Company?

A. Except to say this, that in the conduct of our business, we make no differentiation between employees who have not been designated as Gateway employees and those who have.

Q. I wish that you would at this point explain the arrangement between the Idaho Refining Company and R. E. Stiff. [1447]

A. Well, when we entered into the agreement with the Shell Oil Company, the negotiations extended through April and May of 1941, and it became necessary to get some additional truck equipment. The Refinery was unable to finance it in the regular channels purchasing outright, and we therefore entered into a contract with R. E. Stiff of Baker, Oregon, by which we purchased his equipment for a stipulated amount of the capital stock

(Testimony of Henry D. Moyle.)

of the Refinery, and we gave to Mr. Stiff an agreement to purchase the trucks back at any time by the return of that stock under certain conditions, and for a certain length of time. As I recall, it was six months. It may have been a year.

As a matter of fact, the Shell contract says a year. Whether Stiff's was six months or a year, I don't now remember, but in any event, during that period, in which he had the right to buy back his trucks, we agreed that he should hire and fire his own drivers.

He stated that he was particularly anxious to keep the drivers that he then had working on the equipment which he had, and that he would not enter into this agreement unless—so long as he had the right to repurchase the equipment—he could hire and fire his own drivers.

Mr. Penfield: Was the date of that contract established?

Q. (Mr. Merrill, continuing): Substantially when was that contract entered into?

A. My recollection is during the month of May, 1941. [1448]

Q. How are the drivers referred to as those on the river or on the West End, the ones to which you make reference in dealing with Stiff?

A. Yes. This Stiff equipment was purchased to make a haul from the river, hauling gas which we received from the Shell Company there in exchange, and that was hauled into the Boise territory

(Testimony of Henry D. Moyle.)

in return for gasoline which we were furnishing the Shell Company out of the refinery here.

Q. The river that you refer to is the Columbia River?

A. Yes, sir; Attalia, Washington on the Columbia River. Attalia, Washington was the marine terminal from which we hauled.

Q. Now, other than that which you have stated, Stiff had no relationship whatever with the company, is that right? A. That is right.

Q. Or with the Idaho Gas & Oil Company?

A. That is right.

Q. And I understand that he had no arrangement or connection whatever with the Covey Gas & Oil? A. He did not.

Q. Mr. Moyle, I hand you Board's Exhibit 7 which names the officers of the Idaho Gas & Oil Company. Are you able to advise approximately when those individuals became officers as recited on that exhibit?

A. Well, the first group——

Q. And their tenure of office? [1449]

A. The original officers are just what they indicate. They were the officers at the time of the organization of the company.

Q. (Trial Examiner Riemer): When was that?

A. Sometime in 1939, I should say the first half of the year. Mr. Henderson continued as president of that company until he left to hold some public office.

Q. Probate judge?

(Testimony of Henry D. Moyle.)

A. Probate judge? When was that?

Q. That was approximately two years ago?

A. Yes, I would say he held that office until two years ago when he filled some public office here.

At that time, Mr. Peterson became the president, and Arch Webb took Mr. Peterson's place as secretary and treasurer. Those same officers continued until Mr. Webb left for the Army. That is just two years ago now I think he testified.

Trial Examiner Riemer: He went into the army in December, 1940.

The Witness: Yes,—well, whenever it was—December, 1940. When Mr. Webb left the Idaho Refining Company, Mr. Frank Copening became the Secretary-Treasurer and those officers continued until the spring of 1942, when Mr. Albertson became president, and those officers continued until July, when Mr. Copening went into the army and William McMillan became the secretary-treasurer in July, 1942.

Q. Mr. Moyle, I wish you would relate a little more in detail [1450] the relationship to the Idaho Refining Company of the Idaho Gas & Oil Company. I understand that the Idaho Refining Company does not own any of the stock of the Idaho Gas & Oil Company. Is that correct?

A. That's right.

Q. Explain that relationship, then, between them.

A. The incorporators of the Idaho Gas & Oil Company for the most part, were stockholders of the Idaho Refining Company, and they invested

(Testimony of Henry D. Moyle.)

in that company some eighteen or nineteen thousand dollars in capital, and since its organization, the Refining Company has loaned that corporation upwards of \$295,000, and the Company has built up—the Idaho Gas & Oil Company has built up the principal company controlled retail outlets for the Refinery in the territory from Twin Falls west.

Q. Then do I understand that because of the relationship of debtor and creditor, the Idaho Refining Company has rather close control of the Idaho Gas & Oil Company?

A. Yes, and I might say this situation is true with some other companies—that is, other distributors who distribute the Refinery products.

Q. Now, Mr. Moyle, did you come to Pocatello and engage in a meeting or hold a meeting with the employees of the Idaho Refining Company in the spring of 1939? A. I did.

Q. Will you relate that incident and advise what was said at the [1451] meeting and by whom?

A. Well, I was urged by the company, especially Mr. M. B. Kaye who was the general manager of the refinery, to look into the question of obtaining financial assistance for the refinery employees obtaining living quarters in Pocatello. There seemed to be some difficulty here from lack of housing and lack of transportation from the city to the plant. It was his idea that if it were possible, some housing should be furnished near the plant.

We were experiencing a great deal of difficulty in getting the plant to function economically, and

(Testimony of Henry D. Moyle.)

were having various complications and difficulties with the plant which required the employees to come in frequently to the plant when the shifts would require them.

I looked into the subject pretty carefully and came up here and held a meeting which has been referred to here frequently, on the rear steps of the finery and gave to the employees of the refinery my findings with reference to the various possibilities of financing homes.

Q. Reference has been made to the FHA program. A. That was one of them.

Q. What was said with reference to that, if you remember?

A. Well, you mean the details of the program?

Q. Just generally.

A. I indicated to them that it was quite possible through FHA [1452] to get assistance financially if they had the proper building sites located.

Q. Mr. Moyle, state whether or not that meeting had anything to do with the Idaho Refining Company Employees Benefit & Labor Association, or the members thereof?

A. None whatsoever. I knew nothing about such an association at that time.

Q. And state whether or not any discussion was had touching any membership of that Association, or the members thereof?

A. There was not.

Q. Was there any reference made to such?

A. No, sir.

(Testimony of Henry D. Moyle.)

Q. Now, Mr. Moyle, some testimony has been introduced touching discounts for gasoline and oil to certain persons. Will you state what has been the policy of the Idaho Refining Company with reference to that matter?

A. Well, I announced to the employees of the Refinery that it would be the company policy to give to any employee his gasoline at substantially our cost plus enough merely to handle the situation, credits and so on.

Q. Did you advise them as to the manner in which that gasoline was to be discounted, or by whom?

A. Well, I told them at that time that the details would be worked out and the management would designate some station in Pocatello handiest to the refinery from which they could buy [1453] that gasoline.

Q. State whether or not that policy has been followed by the company since that time?

A. I have been so advised, yes.

Q. State whether or not that discount——

A. That discount, of course, went,—it was not confined at that time, or any other time, as far as I know, to gasoline. It came up at the time that we discussed the building of these homes in connection with the suggestion that so far as the purchasing of building materials, cement, sand and gravel, and things of that kind, that they might get, in addition to automobile accessories, that we would endeavor to give the employees the benefit of any re-

(Testimony of Henry D. Moyle.)

duction that we could get as a refinery with our refinery purchasing power.

Q. State whether or not that privilege was extended to all of the employees, irrespective of membership in the Association or confined to any group?

A. It was extended to all of the employees of the Refinery, regardless of any affiliation they might have with anybody.

Q. Has that been the continued policy?

A. I have been so advised. The management was then instructed to do so.

Q. Mr. Moyle, I am directing your attention to the item of insurance. Will you explain the policy of the company with reference to insurance and its experiences, in so far as [1454] the same cover motive power equipment of the company?

A. Well, I had nothing to do with the insurance—that is, the original writing of the insurance. I knew who our insurance carriers were so far as the agents were concerned. I knew that from the daily reports I got from the refinery, we were having accidents, and Mr. Sheets advised me from time to time that the situation was growing more and more serious.

Q. Which Mr. Sheets was that?

A. Mr. Gilbert S. Sheets, the president of the company.

Q. Growing more serious in what way, Mr. Moyle?

A. Both as to frequency and what they call

(Testimony of Henry D. Moyle.)

the loss ratio—the losses against the amount of the premium.

Q. How frequently was this advice given you, say in the year 1941, prior to November 14th?

A. I think that the only accidents that were ever reported to me, were what you would call the more serious or major accidents.

Q. Yes, what complaint if any was made to you, and by whom, touching accidents and a possible cancellation of the policy?

A. Well, Mr. Sheets very frequently discussed with me in Salt Lake, the possibility of a cancellation, and also the very great difficulty we would have if our policy were cancelled.

Q. In what respect, Mr. Moyle, would that difficulty arise?

A. Well, I recall especially Mr. Sheets telling me on more than one occasion that the fact that the companies with which he was associated and who had written our insurance, if they cancelled, [1455] the companies who had no such interest in our refinery would be less likely to take up the insurance when once cancelled.

Q. When did this matter of the cancellation of the insurance come finally to your attention for action, if it did?

A. Well, the early part of November, 1941, I attended the American Petroleum Institute in San Francisco. As I recall, I was there ten days. Whether I was notified while I was in San Francisco of its cancellation or not, I don't remember,

(Testimony of Henry D. Moyle.)

but I returned to Salt Lake City on the 11th and had a three-hour conference with Mr. Sheets on this matter on the 12th of November, 1941.

Q. And what was the subject matter of the conversation? Relate it in some detail.

A. The question of what we would have to do to get new insurance and from my end of it, we would not be able to operate past the 17th unless we had insurance. We discussed in that connection the financial condition of the company.

Q. What else did you discuss? Did you discuss the reasons for the cancellation?

A. Well, I don't think that we wasted much time discussing the reasons, and I was definitely informed by Mr. Sheets that the reason was our loss record—our accident record.

Q. Did you and Mr. Sheets come to any conclusion at that time, that is, on the 12th day of November, 1941, as to any action that you would take in this matter? [1456]

A. We came to the conclusion that without the discharge of our drivers, we would not be able to get anybody to consider the re-writing of our insurance.

Q. Was there any conclusion reached at that time touching the discharge of these drivers?

A. Yes, we decided at that time that we would either have to do that, or quit business.

Q. What drivers were particularly involved in that decision?

(Testimony of Henry D. Moyle.)

A. Well, the drivers that were regularly hired by the Idaho Refining Company out at the refinery that had charge of our equipment, that had had these major accidents. In fact they were the only ones that we did consider.

Q. Was there any consideration of the distinction between drivers who had had major accidents and drivers who had not had major accidents?

A. No, as far as I was concerned, there had never been anything reported to me as objectionable to the insurance company except the larger or major wrecks, which our larger equipment had had. In fact, I had no record at all of any other accidents.

Q. Now, what did you and Mr. Sheets do, if anything, with respect to coming to a decision on this matter?

A. Well, after a conclusion of our conference, and after he reported to me what he knew, and I reported to him my judgment, we decided as I indicated that the only thing we could do would be to discharge these drivers. [1457]

Q. At that time, did you know whether or not these drivers or any of them, were members of any outside labor organization or particularly Teamsters Local 440?

A. I did not.

Q. Did you know whether or not they were, or any of them were, members of any union?

A. Well, I just assumed, from the agreement of June, 1941, that they were members of the Benefit Association inside the refinery.

(Testimony of Henry D. Moyle.)

Q. Did you ever have information of any kind or character touching union activities of any of these men? A. I did not.

Q. State whether or not the union activities of any of these men had anything whatever to do with the decision which you and Mr. Sheets made for the discharge of these drivers?

A. I should say definitely not.

Q. Did you know a man by the name of Archibald?

A. Well, so far as I can recollect, I have been thinking of him all through this trial—I don't think I ever heard his name before he came here to the trial of this case or before I read the complaint in this case.

Q. Did you know anything of his discharge?

A. I did not.

Q. Or anything of his relationship or association in any union or any union activities? [1458]

A. I knew nothing whatever about it.

Q. I believe that you said that you made efforts to get insurance. What efforts were made, Mr. Moyle, I mean in so far as the cancellation of the Firemen's and Metropolitan policies—

A. Well, I was informed when I returned on the 12th that every possible agency had been contacted and that the matter was under consideration with them. That up to that time, we had had no favorable reply of any kind, and that unless there was something done by the company to change the situation, we likely would not have any.

(Testimony of Henry D. Moyle.)

Q. Why did you think that the discharge of the drivers would make it easier for the company to get new insurance?

A. Well, I understood that nothing short of a complete change—definite change—in our set-up would be sufficient to put us in a position where any of the companies would consider us.

Q. State whether or not that was the reason for your decision?

A. Well, Mr. Sheets and I went over the whole situation. We couldn't change the equipment. We couldn't change the job to be done. We came to the conclusion that there was only one thing that could be changed, and that was the drivers.

Q. Is there anything further in connection with that meeting with Mr. Sheets in Salt Lake City on the 12th of November, 1941?

A. Well, Mr. Sheets and I agreed that I should come to Pocatello the next day, explain the situation to Mr. Moyle, and have him carry it out. [1459]

Q. What did you do then?

A. Well, that is just what I did. I came here on the 13th of November, 1941.

Q. About what time of the day did you reach Pocatello, do you remember?

A. Well, my recollection is that I came—got in here sometime around noon. I could be mistaken about that, and as far as my recollection now goes, I was only in the refinery for a short while the afternoon of November 13.

(Testimony of Henry D. Moyle.)

It was represented to me that the companies had not yet approved of issuing any policy to us, but Mr. Watkins advised me that he thought his company during the afternoon would give me a binder pending their determination whether they would write the policy or not, and that afternoon Mr. Watkins brought me in a ten-day binder, dated back as I recall it, to noon of the 17th.

There was some discussion as to whether the original cancellation notice took place at midnight, the beginning of the 17th or high noon. But, as I recall it, Mr. Watkins' binder was dated from high noon of the 17th.

Q. Then what further was done with reference to securing insurance?

A. Well, before the ten-day period had expired, Mr. Watkins had given us rather definite assurance that the policy would issue, and he issued us a second binder, then later, the policy. [1462]

Q. Are you able to state whether or not the policy was ultimately issued because of the discharge of these drivers, or would it have issued if they had not been discharged?

Mr. Penfield: I object to that. I don't see how he knows.

Mr. Merrill: He knows what they told him.

Mr. Penfield: Well, get the insurance representative in that case.

Trial Examiner Riemer: If you know, you can answer the question.

A. Well, that's what they told me.

(Testimony of Henry D. Moyle.)

Q. (Mr. Merrill, continuing): Repeat what they told you.

A. They told me that they wouldn't consider writing it until after we had discharged them and were in a position to ask us to discharge them.

Q. (Mr. Penfield, continuing): Who told you that?

A. My recollection,—both Watkins and Mr. Sweeney.

Q. (Mr. Merrill, continuing): When did they tell you that?

A. Mr. Sweeney in my office, and Mr. Watkins either over the phone or in my office. I had one conversation with him over the phone from Idaho Falls and I think one from my office. I think that he came to Salt Lake.

Q. Is that Mr. Sweeney? A. Yes.

Q. Who was Mr. Sweeney?

A. He is an insurance agent in Idaho Falls.

[1463]

Q. When did Mr. Watkins tell you that he wouldn't write the insurance unless those drivers had been discharged?

A. Well, that was at the meeting on the 17th. That is, he gave me to understand that. I understood that it was a delicate situation with the insurance companies, they would not be put in a position whether they either recommended, or urged or requested the discharge of the drivers. That was made clear to me, but that after we had discharged them on our own initiative, the fact is

(Testimony of Henry D. Moyle.)

tions under the Interstate Commerce Commission covering insurance on motor vehicles of the type and character and for the purpose used by the Idaho Refining Company? A. I have.

Q. And what were the requirements at the time that you came to this decision in November, 1941, with respect to insurance?

A. Well, our company would either have to have the insurance required by the insurance regulations of the Interstate Commerce Commission, or have qualified as a self-insurer before we could have engaged in operating on the highways in interstate commerce.

Q. Was the Idaho Refining Company able to comply as a self-insurer under the rules and regulations of the Interstate Commerce Commission?

A. We were not.

Q. Why?

A. Because of our lack of capital.

Mr. Penfield: I don't think that it is material. [1466]

Trial Examiner Riemer: That's enough.

A. (Continuing): As shown by an exhibit heretofore introduced. What was the number

Mr. Penfield: I object to that, and object to any further——

Trial Examiner Riemer: That was Respondent's 6.

A. Respondent's Exhibit 6.

Q. (Mr. Merrill, continuing): Now, Mr. Moyle, when did you next come up to Pocatello from Salt

(Testimony of Henry D. Moyle.)

Lake City after you first were here on the 13th of November, 1941?

A. The 21st of November.

Q. At that time, did you have a meeting with anyone in the refining plant? A. Yes.

Q. What was the purpose of your visit on that day?

A. I understood that a Mr. Brandt and a Mr. Rosqvist wanted a meeting at the Refinery with reference to an agreement that they had left with the Refinery the week before.

Q. Did you know those gentlemen at that time?

A. As far as I remember, I had never met either one of them before.

Q. What time did this meeting convene on the 21st of November, 1941?

A. As near as I remember, it was in the morning.

Q. Where was it held?

A. In the Refinery office. [1467]

Q. Who was present?

A. Those two gentlemen, and Mr. John Evans, Gilbert Moyle, and myself, and Frank Copening.

Q. Will you relate exactly what was said and done at that meeting, Mr. Moyle?

A. These men asked if we were ready to sign the contract——

Trial Examiner Riemer: In describing this conversation, tell us who spoke, giving the names of the individuals, if you can.

(Testimony of Henry D. Moyle.)

A. (Continuing): As to the two labor men, I could be mistaken. It is my recollection that Mr. Rosqvist led off in the first part of the conversation and asked whether or not we were ready to sign this contract, and I told him that as far as I was concerned, unless I had some proof or evidence of his right to bargain for the employees of the refinery, that an agreement which we already had with the employees would seem to prevent me from so doing.

Q. And what did he say?

A. In other words, I told him that I didn't see how we could have two representatives at the same time.

Q. What did he say in response to that?

A. Well, he said in substance, "What kind of proof do you want?"

Q. What did you say?

A. I said it was my first experience, that I didn't have the wildest idea what kind of proof he had. I said I would be [1468] glad to consider any proof, or any evidence.

Q. And then what did he say?

A. Well, he said that it wasn't—I think that he made some statement that it wasn't customary to produce proof, or wasn't customary to produce any evidence, or something, and I told him that I didn't see how I could deal with him unless I knew whom he was representing. I asked him, I think, specifically the question, "Whom do you represent?"

Q. And what did he say?

(Testimony of Henry D. Moyle.)

A. And he said substantially that the names of the men were a secret which he could not divulge. I don't know whether he said according to the rules of his organization, or not, but that was the impression I got from what he said, there was some rule or regulation that would not permit him to divulge the names of the people that he represented.

Q. Then what was said, further?

A. Well, I told him that I was sorry, but until I could be informed as to whom he represented, it would be difficult, if not impossible, to bargain with him.

Q. What further was said?

A. Well, we had some discussion—some further discussion as to—I think he asked me more or less categorically if I refused to bargain with him, and I said “No”, that I had come up there purposely to bargain with him if I knew what he was bargaining for, or what authority he had to bargain for them. [1469] And I recall that something was said about “Don't you know Mr. Evans, one of your drivers”, and I think that I told him that I didn't know him personally, but very likely he was a driver, that I didn't dispute that fact at all.

Q. What further was said, if anything, Mr. Moyle, and by whom?

A. Well, we discussed some further the agreement that we had with the Association, and Mr. Brandt suggested that maybe if that was the case—that is, that we had this agreement,—an election

(Testimony of Henry D. Moyle.)

ought to be called for the purpose of determining who represented—properly represented the employees of the refinery, and I told him that he could hold an election any time or any place that he would like to, we had no objection.

Q. What reply did he make to that, if any?

A. Well, I don't think that there was ever anything further said on the subject of election that I recall.

Q. Was there anything further said at that meeting that you now recall?

A. Oh, about that time, these men stood up and we greeted each other and they departed.

Q. Did anyone besides yourself on behalf of the Idaho Refining Company make any statement or comment, or ask any questions?

A. Well, not unless Frank Copening or Gilbert **Moyle** may have made to me when I said that I didn't know John Evans, that he was a truckdriver or something to that effect.

Q. Other than that, was there any statement made by any one of [1470] them?

A. I think not.

Q. Mr. Moyle, did you ever refuse to negotiate with this organized group, or any organized group if they were properly represented?

A. Well, I never refused to bargain with them at all.

Q. What is the fact as to whether or not you are open for bargaining at any time?

(Testimony of Henry D. Moyle.)

A. I told them that that was the fact.

Q. And was it the fact?

A. It is the fact, and it was then.

Q. Did they ever present to you any proof of their right to represent any group of employees working for the refining company, or otherwise?

A. Would you read the question?

(Thereupon the last question was read aloud by the reporter as hereinabove recorded.)

A. I think that is the only time I ever met those men or saw them.

Q. Did either of them ever take this matter up with you in Salt Lake City?

A. They did not.

Q. Did either of them ever call on you again?

A. They did not.

Q. Do you recall now whether you have related all that occurred [1471] at that conversation?

A. Well, I think substantially all; I don't recall anything else specifically.

Q. And has anything happened with respect to that matter since that date, so far as it has been brought to your attention?

A. Well, nothing except the investigation and institution of this suit. [1472]

Q. (Mr. Penfield, continuing): Your first knowledge of the actual cancellation of the insurance came from Mr. Sheets, did I understand you to say?

A. That is my present recollection, yes.

(Testimony of Henry D. Moyle.)

Q. And that is when you returned from the Coast

A. That is right.

Q. That was on November 12?

A. I may have known something about it. I mean, regardless of where I am, I get telephone calls all the time, and that information may have passed by telephone while I was in San Francisco, but I don't have no recollection of it now.

Q. You met with Mr. Sheets on November 12 to discuss the matter and you decided that further action should be taken by the company, is that correct?

A. That is right.

Q. And as I understand it, during this conference, neither of you knew anything except that the insurance had been cancelled because of the loss ratio. You didn't know anything about the individual driving records of any of the drivers, is that correct?

A. Your question has two questions in it. Which one do you want me to answer?

Q. Well, if you can, figure them both out. [1475]

Mr. Merrill: I object to the question.

Trial Examiner Riemer: Sustained.

Q. (Mr. Penfield, continuing): At the time that you met with Mr. Sheets, did you know anything of the accident records of the drivers?

A. Yes.

Q. The individual accident records?

A. I knew nothing about them individually by name.

(Testimony of Henry D. Moyle.)

Q. Then all you knew was the loss ratio, is that correct? A. No, that is not.

Q. What did you mean, then, when you say that you knew something about the accident record?

A. Well, as I indicated, I get a record of every major accident, and I get a daily report from the refinery on the business of the refinery. I knew from day to day and week to week and month to month what was transpiring up here, and I make frequent visits to Pocatello.

Q. The only reports you had, though, were of accidents that had occurred. You knew nothing of the accident records of the other men?

A. Yes, I knew in each instance which driver had the accident when I got the report, but you were asking me about the day I talked with Mr. Sheets.

Q. Yes, I am asking you that.

A. The day Sheets and I talked, we didn't have the individual [1476] record of any driver before us.

Q. I believe that several of the insurance men have testified, and I believe that Mr. Sheets also testified, that it is not only the major accidents but the fact that there are a number of smaller accidents that is influential in the determination of an insurance company to continue with a risk.

A. I didn't so understand.

Q. Didn't he discuss that with you at this meeting on the 12th? A. He did not. [1477]

Q. When you came to Pocatello on November

(Testimony of Henry D. Moyle.)

13, and you ordered Mr. Gilbert Moyle to discharge the drivers, why did you order the drivers who were out called in from their trips and that they be paid up on November 14, the next morning?

A. I didn't so order.

Q. Wasn't that matter discussed, when the drivers would be paid off?

A. I told him to discharge them just as quickly as they could, that it would be impossible for us to have any negotiations with insurance companies until after they were discharged, and that we [1478] had only two or three days left.

Q. (Trial Examiner Riemer): Well, you had been negotiating before you came to Pocatello, hadn't you, Mr. Moyle?

A. I had not, no, sir.

Q. Well, I mean the officers of the company had?

A. They had gotten no insurance.

Q. (Mr. Penfield, continuing): Actually you had insurance and would have had it up to the 17th?

A. Yes, but we had to have new insurance by the 17th. That just gave us three days after the discharge of the drivers in which to make that representation and get the insurance.

If we hadn't discharged the drivers until the 17th, we would have then been several days without insurance pending the negotiation of it. There was no policy negotiated on the 14th.

Q. As a matter of fact, the agents for the Commercial Standard Insurance Company were not ap-

(Testimony of Henry D. Moyle.)

proached until after the drivers had been discharged?

A. I don't know what you mean by approached.

Q. Well, that is their testimony here; do you think that was incorrect?

A. I don't know; I didn't approach them before. The first conference I had with Mr. Watkins was on the 17th.

Q. Watkins said that he was first approached on the 15th of November.

A. I say I don't recall anything about it. [1479]

Q. Well, how did you happen to conclude that it was necessary to discharge the drivers in order to get new insurance, if you didn't discuss the matter with any of the insurance companies until after the drivers were discharged?

A. You are talking about me, personally? I had a three-hour conference with Gilbert Sheets, who is an experienced insurance man, and I personally have been an attorney for more than 20 insurance companies at a time over a period of many, many years, and I think that both Mr. Sheets and I knew something about the insurance business, and we met in my office on the 12th, and he brought in everything that he had been able to get since the notice of cancellation was given him on the 8th and we came to a conclusion there, according to our best judgment, that unless we did that, we wouldn't get any insurance.

Q. Did you consider the question of retaining the drivers who had not had accidents?

(Testimony of Henry D. Moyle.)

A. We considered every phase of it that we could conceive of.

Q. Did you consider that phase?

A. Yes, that was one of them.

Q. Why did you conclude that that would not be an effective means?

A. We concluded that there was nothing short of a complete housecleaning would induce any company to issue the insurance with the record that we had of accidents, and furthermore, we considered the element of time for any company to come up here [1480] and go into the records of the various drivers and differentiate one from the other, it would take more time then we had.

Q. You had records——

A. I didn't at that time, and neither did Mr. Sheets.

Q. They certainly were available very readily.

A. That may be your opinion. That wasn't mine.

Q. When you came to Pocatello and had this meeting with Mr. Moyle, in which you told him to discharge the drivers, did you discuss the matter of obtaining new drivers?

A. No, that was a matter that I left entirely to them. I had nothing to do with hiring and firing drivers. I discussed the difficulty that they would have in getting new drivers with them.

Q. Did you discuss the problem of the qualifications of the new drivers?

(Testimony of Henry D. Moyle.)

A. I didn't personally go into any question of the qualifications other than to state to them that it would be necessary for them to use the greatest degree of care and caution in hiring any new drivers, and they were not to hire them any faster than they could get competent drivers, even if we had to buy gasoline from other outfits to fill in.

Q. Did you suggest any tests to be used in securing competent drivers?

A. Several safety tests are accorded. I, of course, am not an expert.

Q. Did you suggest any sort of a test? [1481]

A. My instructions were that they were to use the greatest care and caution, and not to put anybody on the equipment that was not fully competent to handle it. They were not to hire new men any faster than they could get competent men.

[1482]

Redirect Examination

Q. (Mr. Merrill): Mr. Moyle, was there anything said at that time by Mr. Brandt or anyone else that you remember wherein the figure 52 per cent of the employees was used?

A. Well, I have some recollection of it. It is not entirely clear in my mind. Some such a statement, it seems to me, was made near the beginning of our conference and it gave me the impression that they were there for the purpose of bargaining for all of the employees.

Q. Was there anything said touching an election then of all the employees?

(Testimony of Henry D. Moyle.)

A. Well, as I understood, Mr. Brandt's suggestion was that an election be held with the employees to determine whether—or who was their bargaining representative.

Q. At the conclusion of the meeting, what was your understanding as to whether or not it was closed or that further negotiations were in order, or would be followed up?

A. Well, frankly I expected to either have a further conference in which they would present some evidence of whom they represented—that is, which of our employees they represented—or I frankly expected they would come in and ask for an election. [1490]

Q. Were you prepared to meet with them about either one of those matters? A. Yes, indeed.

Q. What is the fact as to whether or not that was the understanding you had when the meeting closed?

A. Well, I wouldn't say understanding, because there wasn't anything—they didn't say they would come back or they would do anything, but that was the impression I was left with as the result of the conclusion of our conference. [1491]

Q. (Mr. Merrill): At the time you and Mr. Sheets discussed the matter of the cancellation of insurance on the 12 day of November, 1941, did you have in that conversation a discussion with any agents concerning the possibilities of getting additional or other insurance? A. No.

Q. I see.

(Testimony of Henry D. Moyle.)

A. We simply discussed the information we had then at hand.

Q. Mr. Sheets, I understood, however was and had been for many years last past in the insurance business; is that a fact? A. That is correct.

Q. And you yourself had had considerable experience as counsel for insurance companies covering matters similar to this one?

A. Well, I would say touching all matters on all kinds of insurance.

Q. And it was only the fact as to whether or not the discharge of the drivers appeared to be absolutely necessary in order to secure additional or other insurance?

A. That was the best judgment of Mr. Sheets and myself. [1493]

Q. Then following that, state whether or not that judgment was in any wise confirmed by discussions with insurance agents from whom insurance was sought or secured.

Mr. Leicht: That I object to again on the grounds it has been answered several times.

Trial Examiner Riemer: We will hear it once more. Overruled.

A. Well, to the extent that they first seriously entertained our application for insurance after we had discharged the drivers and made that representation to them. I think it is only fair to say that it was a very delicate matter for the insurance company, to directly or indirectly request the discharge of these drivers. That has to be the com-

(Testimony of Henry D. Moyle.)

pany's responsibility and they have to do it of their own volition. [1494]

Q. (Mr. Merrill): Now Mr. Moyle, some reference has been made to a 60-hour week as driving time under the Interstate Commerce Commission regulations. Do you know the rule of the Interstate Commerce Commission that required that or provides for it? A. Yes.

Q. What section of the rule is that?

A. That is under the heading, "Private Carriers of Property" under regulations effective October 15, 1940 as published in the Motor Carriers Safety Regulations Revised including orders issued through November 4, 1940, Part Five and Rule Three, cover the hours of labor of page 93 of these regulations. [1495]

Q. What else does it provide?

A. It provides for a 60-hour week providing the carrier is operating on every day of the week—or not more than 70 hours in any period of 192 consecutive hours—I think that is the substance of it. [1496]

Q. Mr. Moyle, had you on November 12 been told by anyone other than Mr. Sheets that nothing but a definite change would succeed in getting a new policy for the company, [1498] and by nothing short of a definite change and discharge of the truck-drivers?

A. Well, the matter had been under discussion off and on whenever these serious accidents occurred and I think it is fair to say more frequently in the

(Testimony of Henry D. Moyle.)

fall of 1941 than ever before, that if these accidents were continued, our policy would be canceled and that if it were canceled, we would have very great difficulty in getting a policy and certainly we wouldn't get one without making a drastic change in our set-up.

Q. Did you at all investigate the problem of whether by paying an increased premium you could continue the employment of truckdrivers?

A. Well, I think on various occasions——

Q. No, I mean on November 12.

A. As far as I know the question of the amount of the premium was not discussed. In other words, we were concerned only with getting insurance.

Q. I was wondering if in your discussion with Mr. Sheets there arose a possibility of the paying of an increased premium and thereby retaining the older policy rather than getting a new one?

A. That matter had been discussed before, but I am certain it was not on the 12th.

Q. Mr. Moyle, some testimony has appeared on behalf of [1499] the respondent that you and Mr. Sheets are the ones who formulated the decision to discharge, and I want to ask you some questions along that line. First tell me, are the individuals that are named in the Board's complaint except Leo Archibald the only truckdrivers that were discharged as the result of the cancellation of the insurance policy?

A. All I know about it is what I heard in this

(Testimony of Henry D. Moyle.)

case. I never received the names of men who were discharged.

Q. Well, I will put it this way, were any other truckdrivers, transport truckdrivers, employed by the Idaho Refining Company operating out of Boise or Baker or any other place in Idaho or in this area discharged at that time?

A. As far as I know not.

Q. Do you know if any truckdrivers employed in Pocatello, Boise, Baker, or any other city within the confines of the company's business, whether any of those truckdrivers were retained?

A. Well, all I know is what I have heard in this case, and I assumed, of course, there were no others discharged other than those working out of the refinery. In other words, I had no idea anybody would be discharged in the west end of our operations under Mr. Stiff.

Q. Well, why?

A. Well, in the first place——

Q. Let me put it this way. Did this decision made by you and [1500] Mr. Sheets on November 12 contemplate only the discharge of the drivers of transports operating out of Pocatello?

A. I think that is right.

Q. Well, why that limitation?

A. Well, in the first place, as far as I was concerned I went on the assumption that we had *not* right to discharge Mr. Stiff's drivers. This occurred at a time when he had under a contract with us a right to take care of his own drivers, and in the

(Testimony of Henry D. Moyle.)

second place so far as his drivers were concerned, I didn't know of any accidents any of them had ever had. In the third place there was no discussion between Mr. Sheets and myself on my return from California concerning any differentiation. I mean, we did not discuss, "We will order the discharge of this driver and not this one." We were simply discussing our truckdrivers at the refinery, and I don't believe, to be very frank with you, that the drivers out of Baker under Mr. Stiff, because of those facts entered into our discussion.

Q. Wasn't Mr. Stiff nothing but more or less of a branch manager at the time involved here operating under your control?

A. No, the fact is he really had nothing to do with our business either before or after except to manage his trucks.

Q. Well, he was using your trucks.

A. Well, I say managing his trucks that he had over there, [1501] and had a right to repurchase.

Q. Do you know if there was any other truck-driver discharged at Baker other than Douglas?

A. Well, I didn't know of Douglas's discharge and did not know of any others.

Q. And of course, the question of his discharge is one of the issues?

A. That's right, and I know nothing about that. I am sure Mr. Sheets and I knew nothing about Douglas when we had the discussion on the 12th.

Q. Will you say, then, that your discussion on

(Testimony of Henry D. Moyle.)

the 12th at Salt Lake City was concerned only with the drivers working only out of Pocatello?

A. I think that is right.

Q. It is not clear in my mind, Mr. Moyle, why you should so confine your thinking and the decision in view of the fact the policy covered the truck-drivers and operators of at least one subsidiary company, and of at least one company whose debtor-creditor relation to the respondent is so close to bring it, in my opinion, within the definition of an employer in the Act, and in view of the fact that your policy covered all of those drivers plus the additional reason—this is quite involved—but plus the additional reason that the cancellation of the policy, this blanket policy, by the insurance company was based on a loss ratio [1502] that applied over the whole system, so to speak, and wasn't based on losses sustained only by the Pocatello drivers—that is not a question. That is a statement of doubt on my part.

A. You may have that doubt, but if you were in my position——

Q. I would like to hear from you on that.

A. If you were in my position you wouldn't have had any doubt, because over this entire period the only accidents Mr. Sheets had ever discussed with me or told me was *was* affecting or was a threat to the continuance of our policy were these accidents that the drivers of these transport trucks out at the refinery had.

(Testimony of Henry D. Moyle.)

Q. Out of Pocatello?

A. Out of Pocatello. Well, of course, on the Baker end, I don't think any of us ever considered that as anything but a temporary operation and peculiar because of the fact we had taken Mr. Stiff's trucks over on this arrangement, but so far as the Covey Gas & Oil Company and the Idaho Gas & Oil Company are concerned I don't now recall any incident where any accident to any of their trucks was even reported to us.

Q. Did the Idaho Gas & Oil Company truck its own gasoline?

A. Well, for the most part independent licensees were operators and had their own equipment. Sometimes it belonged [1503] to the refinery. But for the most part, I think it belonged to the operator, but that was all covered by our insurance.

Q. What about Covey?

A. Covey the same way. Although it was under our policy, these losses were not losses in every instance of the Idaho Refining Company, so that we gave no consideration to the Idaho Gas & Oil Company at Pocatello because they formed the distribution end of our business rather than the refining.

Mr. McKay: You said "Pocatello"—you meant Covey.

The Witness: I meant Covey.

Q. (Trial Examiner Riemer): You heard me question Gilbert Moyle yesterday concerning losses sustained by at least four or five transport drivers

(Testimony of Henry D. Moyle.)

involving collision and property losses in various accidents from about \$7 up to over \$600, I think. Do you know of your own knowledge whether any of those men who sustained those losses on which the cancellation of the policy was based were discharged?

A. Well, I heard Mr. Moyle say the \$600 loss——

Q. That was Patterson?

A. (Continuing): ——was a truck we didn't own.

Q. That seems to be Patterson in that accident on November 5, 1941, and there is some testimony he was discharged.

A. All I know is what we have heard here in this trial.

Q. I believe you testified on more than one occasion since you have been on the stand that you made no attempt to pick [1504] out your good drivers as distinguished from those who had bad records?

A. That matter was not discussed by Mr. Sheets and myself.

Q. Why didn't you discuss that?

A. Well, it just didn't seem to us to be in the picture at all. In other words, anything short of a complete change there would not have helped us get the insurance within the time that we had to.

Q. Do you know if your decision, that is the decision reached by you and Mr. Sheets on November 12, was ever communicated to Stiff at Baker?

(Testimony of Henry D. Moyle.)

A. Of course not, to my knowledge. I saw no reason for it.

Q. That is, Stiff wasn't instructed to discharge employees at Baker.

A. Well, let me put it this way. I didn't include, nor did Mr. Sheets, in our instruction to Gilbert Moyle, Mr. Stiff. In fact, I didn't refer to Mr. Stiff in my conversation with Gilbert.

Trial Examiner Riemer: I think that is all, thank you. Mr. Merrill?

Redirect Examination

Q. (Mr. Merrill): It has taken considerable time since this hearing in ascertaining the full extent of those accidents, has it not?

A. Yes, it has. I has been seemingly for some unknown [1505] reason rather difficult to get a complete list form the insurance companies. The records seem to be scattered in various places.

Mr. Merrill: I believe that is all.

Mr. Penfield: Nothing further.

Trial Examiner Riemer: You are excused.

(Witness excused)

Mr. Merrill: The respondent offers in evidence Respondent's Exhibit No. 10, which pursuant to conference heretofore had with counsel for the Board is a specimen copy of policy number FM 29227 with an attached classification of figures and property described in the schedule attached to the original policy, together with the items that have been changed by indorsement on the original policy.

The offer is made in this form and the policy has been much condensed in order to conserve time and space and to provide a clear understanding of the items covered. That on the face of the policy in answer to the provision "Amount Deductible", under "Collision Losses," There appears a statement "Per Schedule Attached." That the schedule attached to the original policy provides the amount deductible for each item insured and more particularly that all heavy trucks are subject to the amount of \$100 deductible in case of loss. The lighter trucks and automobiles are subject to a \$50 deductible amount. That the [1506] trailers, semi-trailers, and tanks are subject to various deductible amounts ranging from \$26 to \$70 dependent upon the size of the item insured.

Trial Examiner Riemer: You have heard the offer and the statement of counsel, Mr. Penfield. Is there any objection to that, Mr. Penfield?

Mr. Penfield: No objection.

Trial Examiner Riemer: Is the statement by Mr. Merrill with respect to the schedule attached satisfactory?

Mr. Penfield: It is.

Trial Examiner Riemer: It may be accepted and admitted in evidence as Respondent's Exhibit No. 10.

(Whereupon the document hereinabove referred to was received in evidence as Respondent's Exhibit No. 10.)

RESPONDENT'S EXHIBIT No. 10

National Standard
All Coverage Automobile
Policy
Issued To

Idaho Refining Company, et al
Automobile Fleet—Per Schedule
Expires August 22nd, 1942
at 12:01 A.M., Standard Time
No. FM 227

Firemen's
Insurance Company
of Newark, New Jersey
—And—

The Metropolitan
Casualty Insurance Company
of New York
Pacific Department
220 Bush Street
San Francisco, California
Please Read Your Policy

Carefully Note Conditions Requiring Immediate
Notice of Loss or Accident

Firemen's Insurance Company of Newark,
New Jersey
and

The Metropolitan Casualty Insurance Company
of New York
Stock Companies

Declarations

Automobile Policy

Respondent's Exhibit No. 10—(Continued)

Item 1. (a) Name of Insured Idaho Refining Co., Idaho Gas and Oil Co. & Covey Gas & Oil Co. of Idaho

(b) Address (Number, Street, Town, County and State) Pocatello, Idaho

(c) The automobile will be principally garaged and used in the above town, county and state, unless otherwise specified herein: No Exceptions

(d) The named Insured is (State Whether Individual, Corporation, or Copartnership—if Latter, Give Names of Partners) Corporation

(e) Insured's occupation or business is (If Married Woman, Give Husband's Occupation or Business) Oil Refining

(f) Employer's name and address.....

Item 2. Policy Period: From August 22, 1941 to August 22, 1942 12:01 A.M., Standard Time at the address of the named Insured as stated herein.

Item 3. The insurance afforded is only with respect to such and so many of the following Coverages as are indicated by specific premium charge or charges. The limit of the Company's liability against each such Coverage shall be as stated herein, subject to all of the terms of this policy having reference thereto.

Respondent's Exhibit No. 10—(Continued)

	Limits of Liability	Net Rates	Insurer		Coverages as Defined in the Policy
			Firemen's Premium	Metropolitan Premium	
A	Per Schedule Att.	\$			Comprehensive (excluding Collision or Upset)
B	Per Schedule Att.	\$2411.50			Fire, Lightning and Transportation
C	Per Schedule Att.	\$			Theft, Robbery and Pilferage Broad Form (Insert "Broad" or "Deductible amount")
D		\$			Tornado, Cyclone, Windstorm, Hail, Earthquake Explosion and Water Damage
E	Actual cash value less amount deductible, if any	\$2554.00			Collision
F	Actual cash value Inc. See "A" Above				\$ Per Schedule Att. Amount Deductible
G	\$ 5,000.00 each accident	\$ 998.40			\$ Not Cov. Additional Prem. Convertible
H	\$100,000.00 each person \$100,000.00 each accident As per Endorsement				Glass Damage Including Cost of Replacement Property Damage Liability
	Premiums—each Insurer	\$5,963.90			Bodily Injury Liability
					Use this Space for Additional Coverage
					Total Policy Premium \$8351.55

Item 4. Description of the Automobile and facts respecting its purchase by the named insured:

Trade Name, Type of Body or Load Capacity, if Truck, Seating Capacity, if Bus	Motor and Serial Number	Model No. or Letter No. Cyl. and Year	Cost to Insured including Equipment	Purchased by Insured		
				List Price	Month	Year
See Auto Fleet Schedule Attached						

Respondent's Exhibit No. 10—(Continued)

Item 5. The named Insured is in possession and the sole owner of the above described automobile, subject only to the following Mortgage, Lien or other Encumbrance, if any:

(Blank form.)

If mortgaged or encumbered, loss, if any, under Coverages A, B, C, D or E payable as interest may appear, to the named Insured and (Give name and address)

Item 6. The purposes for which the automobile is to be used are Trucks—Commercial Use. Pri. Pass—Bus & Pleasure

(a) The term “pleasure and business” is defined as personal, pleasure, family and business use.

(b) The term “commercial” is defined as use principally in the business occupation of the named Insured as stated in Item 1, including occasional use for personal, pleasure, family and other business purposes.

(c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

Item 7. No insurer has canceled any automobile insurance issued to the named Insured, nor declined to issue such insurance, during the past year, except as herein stated: No Exceptions

Respondent's Exhibit No. 10—(Continued)

Countersigned at Pocatello, Idaho this 22nd day of August 1941.

TURNER INSURANCE
AGENCY, INC.

By R. S. TURNER

Authorized Agent.

Auto F 1185—Cas. 7180-2d Rev.

[Stamped]: Specimen.

Printed in U. S. A.

Page 2

Firemen's Insurance Company of Newark,
New Jersey
and

The Metropolitan Casualty Insurance Company
of New York

(Each a Stock Insurance Company Herein Called
the Company)

Do hereby Severally Agree with the Insured, named in the Declarations made a part hereof, in consideration of the payment of the premium and of the statements contained in the Declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy, provided (1) that the Firemen's Insurance Company of Newark, New Jersey shall be the insurer with respect to Coverages A, B, C, D, E, F and G and no other, and (2) that The Metropolitan Casualty Insurance Company of New York shall be the insurer with respect to Coverage H and no other:

Respondent's Exhibit No. 10—(Continued)

Insuring Agreements

I. Coverage A—Comprehensive—Excluding Collision or Upset

To pay for any loss of or damage to the automobile and the equipment usually attached thereto, except that the Company shall not be liable for loss caused by collision with any other object or by upset.

Breakage of glass and damage caused directly by tornado, cyclone, windstorm, hail, falling aircraft or parts thereof and damage resulting from theft, earthquake, explosion, riot, riot attending a strike, insurrection or civil commotion shall not be deemed a loss caused by collision or upset.

Coverage B—Fire, Lightning and Transportation

To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by fire, arising from any cause whatsoever; or lightning; or the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported on land or water, including general average and salvage charges for which the Insured is legally liable.

Coverage C—Theft, Robbery and Pilferage—(Broad Form):

To pay for loss consisting of the theft, robbery or pilferage of the automobile and its equipment usually attached thereto or injury to or destruction of such property directly resulting from the

Respondent's Exhibit No. 10—(Continued)

theft, robbery or pilferage, excluding however, the theft, robbery or pilferage of tools or repair equipment, unless the entire automobile is stolen.

Theft, Robbery and Pilferage—(Deductible Form):

To pay for loss consisting of the theft, robbery or pilferage of the automobile and its equipment usually attached thereto or injury to or destruction of such property directly resulting from the theft, robbery or pilferage, but only the amount of each separate loss, when determined, in excess of the deductible sum stated in Item 3 of the Declarations, unless the entire automobile is stolen, in which event the deduction shall not be made.

Coverage D—Tornado, Cyclone, Windstorm, Hail, Earthquake, Explosion and Water Damage

To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by tornado, cyclone, windstorm, hail, earthquake, explosion, or accidental and external discharge or leakage of water.

Coverage E—Collision

1. To pay for loss consisting of injury to or destruction of the automobile and its equipment usually attached thereto caused by accidental collision with another object or by upset, but only for the amount of each separate loss, when determined, in excess of the deductible sum, if any, stated in Item 3 of the Declarations.

Respondent's Exhibit No. 10—(Continued)

Convertible Form

2. To pay for loss as defined in Paragraph 1, provided that upon the occurrence of the first collision or upset which is made the basis of a claim hereunder, the Insured shall pay to the Company the additional premium, stated in Item 3 of the Declarations, applicable to the automobile involved. Loss or damage occurring to the automobile previous to the reported accident shall in no event be considered the basis of a valid claim.

Coverage F—Glass Damage

To pay for loss consisting of injury (including cost of replacement) to any glass, caused by accidental breakage, if such glass is a part of the structure of the automobile, including any glass appliance permanently attached thereto, subject however, to the provisions stated in Condition M in the event that such injury is caused by collision with another object, or by upset.

Coverage G—Property Damage Liability

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason of the liability imposed upon him by law for damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage H—Bodily Injury Liability

To pay on behalf of the Insured all sums which the Insured shall become obligated to pay by reason

Respondent's Exhibit No. 10—(Continued)
of the liability imposed upon him by law for damages, including damages for care and loss of services, because of bodily injury, including death at any time resulting therefrom, sustained by any person or persons, caused by accident and arising out of the ownership, maintenance or use of the automobile.

II. Defense, Settlement, Supplementary Payments. It is further agreed that as respects insurance afforded by this policy under Coverages G and H the Company shall

(a) defend in his name and behalf any suit against the Insured alleging such injury or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the Company shall have the right to make such investigation, negotiation and settlement of any claim or suit as may be deemed expedient by the Company;

(b) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, but without any obligation to apply for or furnish such bonds, all cost taxed against the Insured in any such suit, all expenses incurred by the Company, all interest accruing after entry of judgment until the Company has paid, tendered or deposited in court such part of such judgment as does not exceed the limit of the Company's liability thereon, and expenses incurred by the In-

Respondent's Exhibit No. 10—(Continued)

sured, in the event of bodily injury, for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

The Company agrees to pay the amounts incurred under division (a) and (b) of this section in addition to the applicable limit of liability of this policy.

III. Definition of "Insured". Except where specifically stated to the contrary, the unqualified word "insured" wherever used in coverages G and H and in other parts of this policy, when applicable to such coverages, includes not only the named insured but also any person while using the automobile and any person or organization legally responsible for the use thereof, provided the declared and actual use of the automobile is "pleasure and business" or "commercial," each as defined herein, and provided further the actual use is with the permission of the named insured. The provisions of this paragraph do not apply:

(a) to any person or organization with respect to bodily injury to or death of any person who is a named insured;

(b) to any person or organization with respect to any trailer while used with any automobile not covered by like insurance in the company;

(c) to any person or organization, or to any agent or employee thereof, operating an automobile repair shop, public garage, sales agency, service station, or public parking place, with respect to any accident arising out of the operation thereof;

Respondent's Exhibit No. 10—(Continued)

(d) to any employee of an insured with respect to any action brought against said employee because of bodily injury to or death of another employee of the same insured injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such insured.

IV. Use of Other Private Passenger Automobiles. Such insurance as is afforded by this policy for bodily injury liability and for property damage liability applies (1) to the named insured, if an individual and the owner of the automobile classified as "pleasure and business" or if husband and wife either or both of whom own such automobile, and (2) to the spouse of such individual if a resident of the same household and to the employer of such named insured, as insured, with respect to the operation of any other private passenger automobile by such named insured or spouse or by a private chauffeur or domestic servant in the employ of such named insured or spouse, and with respect to the presence of such named insured or spouse in any other private passenger automobile. The provisions of this paragraph do not apply:

(a) to any automobile (1) owned in full or in part by or registered in the name of the named insured or any member of the household thereof, other than a private chauffeur or domestic servant employed in connection therewith, or (2) hired as part of a frequent use of hired automobiles by or furnished for regular use to the named insured, a

Respondent's Exhibit No. 10—(Continued)

robes, wearing apparel and other personal effects;

(2) to (a) wear and tear; (b) mechanical or electrical breakdowns, failures or breakages; (c) freezing; [illegible] damage to tires; except where such damage shall be directly caused by, and resulting from other loss or damage which is covered hereunder;

(3) to loss of tools or repair equipment by theft, robbery or pilferage unless the entire automobile is stolen;

(4) to loss or damage due to: (a) wrongful conversion, embezzlement or secretion by a mortgagor, vendee, lessee or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal; (b) war, invasion, military, naval or usurped power; (c) confiscation or authorized destruction by duly constituted governmental or civil authorities;

(5) while the automobile (a) is used in any illicit or prohibited trade or transportation; or (b) is subject to any lien, mortgage or other encumbrance not specifically described in the policy;

Page 3

(c) Under Coverages B, C, D and E, if the interest of the Insured is or becomes other than as stated [illegible] this policy without the written consent of the Company; [illegible] any event for robes, wearing apparel and other personal effects or extra bodies, or for loss caused directly or in-

Respondent's Exhibit No. 10—(Continued)

directly by invasion, insurrection, riot, civil war or commotion, military, naval or usurped power or by any order of any civil authority;

(d) Under Coverage C, to loss from theft, robbery or pilferage by any person or persons in the Insured's household, or in the Insured's service or employment, whether the theft, robbery or pilferage occurs during the hours of such service or employment or not; or by any person, or agent thereof, or by the agent of any firm or corporation to which person, firm or corporation the Insured, or any one acting under express or implied authority of the Insured, voluntarily parts with title or possession, whether or not induced so to do by any fraudulent scheme, trick, device or false pretense; or to loss from the wrongful conversion, embezzlement or secretion by a mortgagor, vendee, lessee or other person in lawful possession of the insured property under a mortgage, conditional sale, lease or other contract or agreement, whether written or verbal;

(e) Under Coverage D, to loss caused by rain, sleet, snow, flood, rupture of tires, or explosion within the combustion chamber of an internal combustion engine;

(f) Under Coverage E, to loss caused directly or indirectly by fire, theft, robbery or pilferage, or consisting of injury to any tire unless caused by an accidental collision or upset of the automobile which causes other injury to the automobile;

(g) Under Coverage [illegible], to loss caused

Respondent's Exhibit No. 10—(Continued)
directly or indirectly by fire, theft, robbery or pilferage;

(h) Under Coverages E, F, G and H, while the automobile is operated (1) by any person under the minimum age required to obtain a license to operate a private passenger automobile in the state, federal district or territory, or province in which the automobile is registered or in which the accident occurs, whichever is lower, or (2) by any person under the age of fourteen years;

(i) Under Coverage G, to property owned by, rented to, in charge of, or transported by the Insured;

(j) Under Coverages G and H, to any liability assumed by the Insured under any contract or agreement; or while the automobile is used for the towing of any trailer not covered by like insurance in the Company; or while any trailer covered by this policy is used with any automobile owned or hired by the named Insured and not covered by like insurance in the Company;

(k) Under Coverage H, to bodily injury to or death of any employee of the Insured while engaged in the business (other than domestic employment), of the Insured, or while engaged in the operation, maintenance or repair of the automobile; or to any obligation for which the Insured may be held liable under any Workmen's Compensation Law.

Respondent's Exhibit No. 10—(Continued)

Conditions

Conditions A to H inclusive apply to all Coverages. Conditions I to W inclusive apply only to the Coverage or Coverages noted thereunder.

A—Declarations

By acceptance of this policy the named Insured agrees that the statements in the Declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations, that this policy embodies all agreements existing between himself and the Company or any of its agents relating to this insurance.

B—Automobile Defined. Two or more Automobiles

Except where specifically stated to the contrary, the word "automobile" wherever used in this policy shall mean the motor vehicle, trailer or semitrailer described herein; and shall include under coverages G and H a trailer other than a trailer home, while used exclusively for personal, pleasure or family purposes, other than business purposes, with any private passenger automobile insured hereunder; and the word "trailer" shall include semitrailer. When two or more automobiles are insured hereunder the terms of this policy shall apply separately to each but as respects limits of bodily injury liability and property damage liability a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile.

Respondent's Exhibit No. 10—(Continued)

C—Assistance and Cooperation of the Insured

The Insured shall cooperate with the Company and, upon the Company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits; and the Company shall reimburse the Insured for expenses, other than loss of earnings, incurred at the Company's request. The Insured shall not, except at his own cost, voluntarily make any payments, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of the accident.

D—Subrogation

In the event of any payment under this policy the Company shall be subrogated to all the Insured's rights of recovery therefor and the Insured shall execute all papers required and shall do everything that may be necessary to secure such rights.

E—Assignment

No assignment of interest under this policy shall bind the Company until its consent is endorsed hereon; if, however, the named Insured shall die or be adjudged bankrupt or insolvent within the policy period, this policy, unless canceled, shall, if written notice be given to the Company within thirty days after the date of such death or adjudication, cover (1) the named Insured's legal repre-

Respondent's Exhibit No. 10—(Continued)
sentative as the named Insured, and (2) subject otherwise to the provisions of Paragraph III, any person having proper temporary custody of the automobile, as an Insured, until the appointment and qualification of such legal representative, but in no event for a period of more than thirty days after the date of such death or adjudication.

F—Changes

No notice to any agent, or knowledge possessed by any agent or by any other person shall be held to effect a waiver or change in any part of this policy nor estop the Company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part hereof, signed by a duly authorized representative of the Company.

G—Cancelation

This policy may be canceled by the named Insured by mailing written notice to the Company stating when thereafter such cancellation shall be effective. This policy may be canceled by the Company by mailing written notice to the named Insured at the address shown in this policy stating when not less than five days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice and the insurance under this policy shall end on the effective date and hour of cancelation stated in the notice. Delivery of such written notice either by

Respondent's Exhibit No. 10—(Continued)

the named Insured or by the Company shall be equivalent to mailing.

If the named Insured cancels, earned premiums shall be computed in accordance with the customary short rate table. If the Company cancels, earned premiums shall be computed pro rata. Premium adjustment may be made at the time the cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the named Insured.

H—Statutory Provisions

Any and all provisions of this policy which are in conflict with the statutes of the State wherein this policy is issued are understood, declared and acknowledged by this Company to be amended to conform to such statutes.

I—Limit of Liability Coverages A, B, C, D and E

The Company's limit of liability with respect to the automobile and its equipment shall be the actual cash value of the property injured, destroyed or stolen, at the time of injury, destruction or theft, or the cost of its suitable repair or replacement not in excess of such cash value, and loss shall be ascertained or estimated accordingly with proper deduction for depreciation however caused and without compensation for loss of use and shall in no event exceed the limit of liability,

Respondent's Exhibit No. 10—(Continued)

if any, stated in Item 3 of the Declarations. In the event of such loss as is covered under this policy the full amount of such loss shall be determined by such ascertainment or estimate between the parties hereto, or if they differ, then by appraisal as hereinafter provided. In the event of loss or damage to the automobile, whether such loss or damage is covered by this policy or not, the liability of this Company shall be reduced by the amount of such loss or damage until repairs have been completed, but shall then attach as originally written without additional premium.

J—Limits of Liability Coverage H

The limit of bodily injury liability stated in the Declarations as applicable to "each person" is the limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by one person in any one accident; the limit of such liability stated in the Declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the Company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, including death at any time resulting therefrom, sustained by two or more persons in any one accident.

K—Limits of Liability Coverages G and H

The inclusion herein of more than one Insured

Respondent's Exhibit No. 10—(Continued)
shall not operate to increase the limits of the Company's liability.

No recovery shall be had under this policy if at the time a loss occurs there be any other insurance, whether such other insurance be valid and collectible or not, covering such loss, which would attach if this insurance had not been effected.

M—Other Insurance Coverages F, G and H

If the Insured has other insurance against a loss covered by this policy the Company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, that the insurance under Paragraph IV shall be excess insurance over any other valid and collectible insurance available to the insured, either as an insured under a policy applicable with respect to the automobile or otherwise, against a loss covered under said paragraph. As respects glass damage caused by collision with another object or by upset: (1) the Company's liability under Coverage F shall apply to such damage, but not in excess of the deductible amount specified in any valid and collectible collision insurance covering such damage, which provides that a specified amount shall be deducted from each loss; (2) the Company shall not be liable under Coverage F if such damage is covered in full by valid and collectible collision insurance.

Respondent's Exhibit No. 10—(Continued)

N—Notice of Accident—Claim or Suit Coverages
G and H

Upon the occurrence of an accident written notice shall be given by or on behalf of the Insured to the Company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the Insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses. If claim is made or suit is brought against the Insured, the Insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.

O—Notice of Loss Coverages A, B, C, D, E and F

In the event of loss covered hereby, the Insured shall give immediate notice thereof in writing to the Company. In the event of theft, robbery or pilferage the Insured shall also give immediate notice thereof to the Police.

P—Protection of Salvage Coverages A, B, C, D, E and F

In the event of any loss whether insured against hereunder or not, the Insured shall protect the property from other or further loss, and any such other or further loss due directly or indirectly to the Insured's failure to protect shall not be recoverable under this policy. Any such act of the Insured or the Company or its agents in recover-

Respondent's Exhibit No. 10—(Continued)

ing, saving and preserving the property described herein, shall be considered as done for the benefit of all concerned and without prejudice to the rights of either party, and where the loss suffered constitutes a claim under this policy, then all reasonable expenses thus incurred shall also constitute a claim under this policy.

Q—Proof of Loss Coverages A, B, C, D, E and F

Within sixty (60) days after loss, unless such time is extended in writing by the Company, the Insured shall render a statement to the Company, signed and sworn to by the Insured, stating the place, time and cause of the loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss, all encumbrances thereon, and all other insurance, whether valid and collectible or not, covering said property; and the Insured as often as required shall submit to examinations under oath by any person named by the Company and subscribe the same; and as often as required shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if originals be lost, at such reasonable place as may be designated by the Company or its agent, and shall permit extracts and copies thereof to be made.

The Company shall have reasonable opportunity to examine any property insured hereunder upon which loss is claimed before repairs are undertaken or physical evidence of loss removed.

Respondent's Exhibit No. 10—(Continued)

R—Appraisal Coverages A, B, C, D, E and F

In case the Insured and the Company shall fail to agree as to the amount of loss each shall, on the written demand of either, select a competent and disinterested appraiser and the two appraisers so chosen shall first select a competent and disinterested umpire. The appraisers shall then appraise the loss, and failing to agree shall submit their differences to the umpire. The written award of any two shall determine the amount of loss. The Insured and the Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of appraisal and umpire.

The Company shall not be held to have waived any of the terms of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any ex-

Page 4

amination provided for herein; and the loss shall in no event become payable until sixty (60) days after the notice, ascertainment, estimate and verified proof of loss herein required have been received by the Company; and if appraisal is demanded, then not until sixty (60) days after an award has been made by the appraisers.

S—Payment of Loss Coverages A, B, C, D, E and F

The Company may, at its option, take all or any part of the insured property at the agreed or appraised value, or either repair or replace any part or all of the insured property upon which loss is claimed with other of like kind and quality or

Respondent's Exhibit No. 10—(Continued)

pay to the Insured in money the full amount of such loss as determined in accordance with the provisions of this policy, subject however, to such deduction if any, as may be applicable thereto. There can be no abandonment to the Company of any property insured hereunder.

T—Loss for Which Carrier or Bailee for Hire is Liable Coverages A, B, C, D, E and F

This Company shall not be liable for loss with respect to the automobile while the automobile is in possession of a carrier or bailee for hire under a contract, stipulation or assignment whereby the benefit of this insurance is sought to be made available to such carrier or bailee; provided however, that the Insured may without prejudice to this insurance accept such bill of lading, receipts or contracts of transportation as are ordinarily issued by carriers, bailees or others containing a limitation of their liability for injury to property while in the possession of such carriers, bailees or others.

U—Action Against Company Coverages A, B, C, D, E and F

No action shall lie against the Company on account of any claim hereunder until the amount of loss shall have been finally determined in accordance with the provisions of Condition I nor unless commenced within twelve months next after the happening of the loss.

Respondent's Exhibit No. 10—(Continued)

V—Action Against Company Coverages G and H

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all of the terms of this policy, nor until the amount of the Insured's obligation to pay shall have been finally determined either by judgment against the Insured after actual trial or by written agreement of the Insured, the claimant, and the Company.

Any person or his legal representative who has secured such judgment or written agreement shall thereafter be entitled to recover under the terms of this policy in the same manner and to the same extent as the Insured. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability.

Bankruptcy or insolvency of the Insured or of the Insured's estate shall not relieve the Company of any of its obligations hereunder.

W—Financial Responsibility Laws Coverages G and H

Such insurance as is afforded by this policy for bodily injury liability or property damage liability shall comply with the provisions of the motor vehicle financial responsibility law of any state or province which shall be applicable with respect to

Respondent's Exhibit No. 10—(Continued)

any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

In Witness Whereof, Firemen's Insurance Company of Newark, New Jersey has caused this policy, with respect to Coverages A, B, C, D, E, F and G and such other parts of the policy as are applicable thereto, to be signed by its President and a Secretary and countersigned on the Declarations page by a duly authorized agent of the Company.

JOHN R. COONEY

President.

W. J. SCHMIDT

Secretary.

In Witness Whereof, The Metropolitan Casualty Insurance Company of New York has caused this policy, with respect to Coverage H and such other parts of the policy as are applicable thereto, to be signed by its President and a Secretary and coun-

Respondent's Exhibit No. 10—(Continued):
tersigned on the Declarations page by a duly authorized agent of the Company.

HOWE S. LANDERS

President.

[ILLEGIBLE]

Secretary

Important

Report Immediately any loss or accident in which your automobile is involved.

This report should be made to the Company's nearest Authorized Agent or to the Company's

Eastern Department

Newark, New Jersey

or

Western Department

Chicago, Illinois

or

Pacific Department

San Francisco, California

or

Southwestern Department

Dallas, Texas

or

Canadian Department

Toronto, Ontario

If serious or fatal injury results, use telegraph or telephone to make report, giving name of Insured, policy number, and name of City or Town where policy was issued.

Respondent's Exhibit No. 10—(Continued)

Get the names and addresses of all material witnesses and give the Company's representative all possible cooperation. Report theft losses to Police.

The Company has claims offices in all important Cities and is equipped to render prompt service throughout the United States and Canada.

Prompt Notice To The

Company Will Insure

Immediate Service

[Cut]

Respondent's Exhibit No. 10—(Continued)

CLASSIFICATION OF MOTOR VEHICLES COVERED ON FIREMEN'S METROPOLITAN CASUALTY INSURANCE COMPANY—No. F.M.-227

Passenger Cars

Light Trucks

Heavy Trucks

Trailer and Semi-Trailers

Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle	Item No.	Make of Vehicle
1.	Oldsmobile Sedan (1937)	6.	Replaced by Ind. 11 Stake-baker Truck (1937) Motor = 168563)	8.	International = 5 Trk. 1932 3250 Gal. Tank	21.	3000 Gal. Tank Semi-Trail. = 11 1939
2.	Dodge Tudor Sed. (1935)	7.	International 1 1/2 T. Panel Truck (1938)	9.	Replaced by Ind. = 11 Waive 4 Ton Truck—Motor = 740940 (1936)	22.	3000 Gal. Tank Semi-Trail. = 12 1939
3.	Packard Convert. Coupe (1939)	13.	International D-30 Pickup = 13 (1940)	10.	Diamond T 2 1/2 Ton Trk. 1938	23.	3050 Gal. Tank Semi-Trail. = 9 (1939)
4.	Buick Coupe (1940)	17.	Ford 1 1/2-Ton Panel Truck (1940)	11.	International DS35 Gas Truck 1939 = 11	24.	3000 Gal. Tank, Semi-Trail. = 22 (1939)
5.	Cadillac Sedan Model "6109" (1941)	18.	Ford 1 1/2-Ton Panel Truck (1940)	12.	International DS35 Gas Truck = 12 1939	26.	3500 Gal. Tank, Semi-Trail. = 7 1938
66.	Buick Sedanet (1941)	35.	GMC 1 1/2 Ton Model T181 (1936)	14.	International DS50 = 14 1940	27.	3500 Gal. Tank, No. 17 Trailer (1940)
Ind.	Pontiac Coupe (1941)	40.	Dodge 1 1/2 T. Truck = 25 (1940)	15.	Mack 4 to 5 Ton Truck = 16 1940	28.	4250 Frenhof Tank Trail. = 14 (1940)
6		41.	Ford 1 1/2 Ton Truck = 10 (1939)	19.	International DS 50—3 to 4 Ton (1940)	29.	4640 Gal. Frenhof Semi-Trail. = 16 (1938)
		43.	Ford 1 Ton 300 Gal. Tank Trk. 1939	20.	International DS 35—2 Ton Trk. (1940)	30.	4250 Gal. Frenhof Tank Trail. = 20 (1940)
		44.	Ford 1 1/2 Ton Trk. 300 Gal. Tank (1941)	25.	International DR 60 Trk. = 7 (1939)	31.	3500 Gal. Tank = Olson Semi-Trail.
		45.	Ford 3/4 Ton Express Truck (1940)	33.	White Tank Truck Model 750T = 28 (1941)	32.	5000 Gal. Frenhof Trail = 26 (1941)
		46.	GMC 1 1/2 T. "AC102" Pickup (1940)	34.	Mack Tractor Type Tank Mod. Ltr. = 26 (1941)	36.	Kingham 3500 Gal. Tank Semi-Trailer Mod. T30D = 17 (1941)
		47.	GMC 1 1/2 Ton Tank Trk. "AC303" 1940	35.	Mack 5T. 200 Gal. Tank Fuel Trk. Model LRSW (1941)	37.	3000 Gal. Tank Frenhof 6 Wheel Trail. = 3 (1940)
		48.	Chev. 1 1/2 Ton Stake Truck (1940)	51.	Replaced by Ind. = 15—Ford 1 1/2 T. 2500 Gal. Trk. 1939	39.	Flat Back Trailer = 23
		49.	Chev. 1 1/2 Ton Truck = 24 (1939)	56.	International 3760 Gal. Tank Truck 1933	42.	3000 Gal. Tank Semi-Trail. = 10 1939
		52.	Ford 1 1/2 T. Truck 2500 Gal. Tank (1939)	Indorsement	= 9—Kenworth Diesel & Wintwin Semi-Trail (4500 Gal) (1940)	Indorsement	= 18—Frenhof 5000 Gal. Tank Trailer (1939)
		53.	Chevrolet 1 1/2 T. Pickup (1931)	Ind.	= 10—Fugeol Truck & Wintwin Trail 1937		
		54.	International C30 1 1/2 T. Truck (1935)	Ind.	= 16—International Heavy Trk. (1939)		
		55.	(Replaced by Ind. = 14	Ind.	= 17—Kenworth 4-Ton Truck (1941)		
		Ind. = 14—Chev. 1 1/2 T. Pickup (1931)					
		57.	International 1000 gal. Tank Trk. (1936)	Ind.	= 19—Frenhof 5000 Gal. Tank Trailer (1939)		
		58.	Chev. 1 1/2 Ton Trk. (1939)				
		59.	Chev. 3/4 Ton Tank Truck (1938)				
		60.	Chev. 1 1/2 T. 425 Gal. Tank Trk. 1937				
		61.	Chev. 1 1/2 Ton 600 Gal. Tank (1940)				
		62.	Ford 1 1/2 T. Truck 690 Gal. Tank (1940)				
		63.	Chev. 1 1/2 Ton 600 Gal. Tank Trk. (1939)				
		64.	G.M.C. 1 1/2 T. Truck 400 Gal. Tank (1939)				
		65.	Chev. 1 1/2 Ton 600 Gal. Tank Trk. (1937)				
		Indorsement No. 7—G.M.C. Stake Body Truck 500 Gal. Tank (1941)					
		Ind. = 8—Ford 1 1/2 T. Truck (1934)					
		Ind. = 20—International 1 1/2 T. Trk—Chassis = 4565 (1941)					
Total	8	31		21		16	

Recap—Totals:

Passenger Cars	8
Light Trucks	31
Heavy Trucks	21
Trailers & Semi-Trailers	16
Total Units	76



Mr. Merrill: I will call Mr. Peters.

DELMAR R. PETERS

previously sworn, was recalled on behalf of the Respondent and further testified as follows:

Q. (Trial Examiner Riemer): You are the Delmar R. Peters who has been previously sworn and identified? A. Yes.

Direct Examination

Q. (Mr. Merrill): Mr. Peters, you are the president, I understand, of the Idaho Refining Company Employees Benefit & Labor Association? [1507] A. That's right.

Q. How long have you been a member of that association? A. Since May, 1939.

Q. During that period of time, have you taken an active part in that association?

A. Not until I was elected president in 1941.

Q. Well, prior to that time you served on various committees? A. No.

Q. I thought you served on the Grievance Committee? A. Oh, that's right—I did.

Q. What is *the as* to the regularity of your attendance at the meetings of the association—Have you attended regularly those meetings?

A. Since 1939?

Q. Yes. A. Well, whenever I could, I did.

Q. What functions are performed by the association for its members?

A. The sick benefits and bargaining with the company are the two main businesses of the association.

(Testimony of Delmar R. Peters.)

Q. Is the association performing those functions? A. Yes, they are.

Q. What is the desire or the feeling of the membership of the association, if you know, as to its functioning and working? [1508]

Mr. Penfield: I object to that. I don't think it is competent.

Trial Examiner Riemer: Overruled.

A. Well, I haven't heard any complaints.

Q. (Mr. Merrill): Well, what have you heard with respect to the desires of the membership, if anything—of the various members, if anything, for a preservation of the association?

A. Well, naturally the members would like to see the association continue in view of the fact that there have been numerous employees received benefits from the association that have helped them carry over at times when they have been sick or injured where it would otherwise have been an awful hardship on them.

Q. What have you to say with respect to the bargaining abilities of the association?

Mr. Leicht: I would like to object to that on the grounds it is immaterial what their desires are of bargaining.

Trial Examiner Riemer: Well, some Circuit Courts seem persuaded by that sort of testimony. I wouldn't say it is altogether immaterial. The objection is overruled.

Read the question.

(Testimony of Delmar R. Peters.)

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

A. We haven't had any trouble bargaining with the company.

Q. (Mr. Merrill): Have you engaged in bargaining with the [1509] company?

A. Yes.

Q. And has it been satisfactory?

A. Yes.

Q. State whether or not there has ever been any type or kind of interference, domination, or attempted control so far as you know by any officer or supervisory employee of the refinery company, the respondent herein.

Mr. Leicht: I object to that——

Trial Examiner Riemer: The objection is overruled.

A. None that I know of.

Q. (Mr. Merrill): Have you ever observed any such? A. No. [1510]

Q. Mr. Peters, do you recall who preceded you as president of the association?

A. I am not sure about that but I believe it was Haskell Duncan—I am not positive.

Q. Do you know whether or not Mr. Henninger was ever president of the association?

A. Mr. Henninger?

Q. Yes.

(Testimony of Delmar R. Peters.)

A. Well, I *have* that he was at some time.

Q. And do you know whether or not Mr. Henninger and Mr. Rice attended any of your meetings within the past year?

A. Henninger did one meeting.

Q. You have members who are in a supervisory capacity, do you not, in the plant?

A. Yes, we have members in that capacity.

Trial Examiner Riemer: What was the answer?

A. Yes. [1511]

BOARD'S EXHIBIT No. 25-A

IDAHO REFINING COMPANY

ANALYSIS OF MECHANICS DAYS WORKED AND TIME OFF FOR
PERIOD JANUARY 25, 1941 TO NOVEMBER 13, 1941

ROSCOE CHARLES BOYER

Date	Days Off	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Hours	Average Day
June 1 to 15, 1941..... (June 4th—first day)	1	1							105	
June 16 to 30, 1941.....	6 7	2—22829		1—17th	1—18th	1—19th	1—20th	1—21st	82½	
July 1 to 15, 1941.....	4	2—6 & 13					1—4th	1—5th	117	
July 16 to 31, 1941.....	2	2—20-27th							155½	
August 1 to 15, 1941.....	2	2—3-10							150½	
August 16 to 31, 1941..... (August 23rd—last day)	1	1—17th							69	
81 Days	16	9 10		1	1	1	2	2	679½	8.4

BOARD'S EXHIBIT No. 25-B

IDAHO REFINING COMPANY

ANALYSIS OF MECHANICS DAYS WORKED AND TIME OFF FOR
PERIOD JANUARY 25, 1941 TO NOVEMBER 13, 1941

ORAN THOMAS

Date	Days Off	Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday	Hours	Average Day
September 1 to 15, 1941..... (Sept. 3—first day)	None								131	
September 16 to 30, 1941.....	1	1—21st							145½	
October 1 to 15, 1941.....	1	1—12th							154½	
October 16 to 31, 1941.....	4	2—19 & 26th						2—18th & 25	125	
November 1 to 13, 1941.....	2	1—2nd		1—11th					109	
72 Days	8	5		1				2	665	9.2



Mr. Penfield: We will call Mr. Cornia.

BOYD CORNIA

was called as a witness by and on behalf of the Board, being [1526] first duly sworn, was examined and testified as follows:

Q. (Trial Examiner Riemer): Tell us your name. A. Boyd Cornia.

Q. Where do you live?

A. 756 East Lander, Pocatello.

Direct Examination

Q. (Mr. Penfield): Where are you employed, Mr. Cornia?

A. I am employed out at the relining plant.

Q. Gun relining plant? A. Yes.

Q. In what capacity? A. Truckdriver.

Q. Were you ever employed by the Idaho Refining Company? A. Yes, sir.

Q. In what capacity? A. Truckdriver.

Q. For what period?

A. I started in May, along about the middle of May 1940.

Q. And you worked until when?

A. November 14.

Q. 1941? A. 1941.

Q. Mr. Cornia, there has been some testimony in this proceeding with respect to an accident in May 15, 1941 in which you were involved. Can you tell us where this [1527] accident occurred and what were the circumstances?

(Testimony of Boyd Cornia.)

A. It occurred at the refinery out at the loading dock—the gate by the loading dock.

Q. Will you explain to us just what happened?

A. Well, I came out in the morning about around one o'clock, I should say, and I went out and got my truck and it had just been overhauled—put in the shop——

Trial Examiner Riemer: Speak up, I don't hear you.

A. (continuing): It has been in the shop being overhauled and I was to take a load of fuel oil to Boise, and I and a loader went down to load the truck—we had to take it down to the tank farm to load it, where they loaded the diesel fuel, and loaded it up and came back around and up to the loading dock to get some fuel for the truck. Just before we got to the loading dock, it sprang a leak—a plug came out—it had been broke off.

Trial Examiner Riemer: What?

A. (continuing): The plug came out. It had been broken off. It was cracked and I guess it fell out and it started to leak and I waited until the loader came and held my hand over the hole the best I could so it wouldn't all leak out. He came up and brought his samples and left them in the laboratory as he came through, and I told him we had an awful bad leak, and asked him what we should do with it.

Trial Examiner Riemer: Who is called him?"

[1528]

(Testimony of Boyd Cornia.)

A. (Continuing): Mr. Hall was his name. He was the man who was in charge of the loading dock that shift, and he said, "Let me get around and see if I can stop it," and he had a rag and he tried to plug it in the hole, but the force kept pushing it out, and he says, "Get in there and drive it down and we will unload it, I can hold it," and I says, "No, you can't do it. It is too hard to ride back there and hold a thing like that," and he still insisted and I said, "No, we better get something and plug it before we start," and he said, "Oh, get in there. It will all be leaked out before we can get started," and I still insisted that we didn't do it that way, but he insisted, I get in there before it all leaked out and insisted that I could drive slow and he could hold it all right, so I got in and started out and made two right-hand turns, and when I made the third right-hand turn, I just glanced over my shoulder and it looked like it was getting away from the tank, so I put the brakes on the trailer and the truck both. The trailer had vacuum brakes on it and there was kind of a slope around the corner and the trailer kept coming. It seemed like came right towards Mr. Hall, and before I could get the door open why he came out of the same side of the truck as I was driving and I asked him if he was hurt, and he says, "Yes, I am hurt pretty bad. You better call the ambulance and the doctor," and

(Testimony of Boyd Cornia.)

I asked him if he would [1529] be all right until I could get back and he said, "Yes," so I ran over to the laboratory and there were a couple of fellows in there and I told them to call the ambulance and the doctor and one of them came back to the scene of the accident with me and after the ambulance came and took him in why then I went and called Mr. Rice and told him we had had an accident.

Q. (Mr. Penfield): Did Mr. Rice say anything about the cause of this accident or your fault in the accident?

A. No, sir. He said not to feel too bad. He said he didn't think it was my fault in any way.

Q. What happened to Mr. Hall, did he die?

A. Yes, sir; he died the next day about noon, I think.

Q. You mentioned that you sought to put on the brakes? Did the brakes from the trailer hold, Mr. Cornia?

A. No, sir; they didn't.

Q. If they had held, could the accident have been prevented?

A. Well, I believe it could.

Q. There has been some testimony concerning a conversation alleged to have occurred around the latter part of September or the first part of October between Mr. Moyle and Mr. Loren McBride.

Trial Examiner Riemer: Gilbert Moyle.

Q. (Mr. Penfield): Gilbert Moyle, Loren McBride at Boise, Idaho. Do you know anything about that conversation? [1530]

A. Yes, sir.

(Testimony of Boyd Cornia.)

Q. Will you tell us what you know?

Mr. Merrill: We object to that on the ground it is in no sense proper rebuttal.

Mr. Penfield: Mr. Gilbert Moyle specifically denied that conversation took place.

Mr. Merrill: Yes, if it please the Examiner, it was part of their direct case and they put on proof covering that. If they had any additional proof, it should have been put on then. This is not proper rebuttal and we object to it.

Mr. Penfield: They have specifically denied that this conversation ever took place and it didn't take place between this witness. We are seeking to prove this witness overheard this conversation.

Mr. Merrill: If there is anything to the testimony at all, it should have been part of their direct case. It is not proper rebuttal under any rule of evidence.

Mr. Penfield: We didn't know it was going to be denied.

Trial Examiner Riemer: The objection is overruled. Repeat the question to the witness and let the respondent have a continuing objection to this line of inquiry.

(Thereupon the question referred to was read aloud by the reporter as hereinabove recorded.)

A. Well, I was sent to Boise on the flat rack with a load of tires and also to deliver some tanks from Boise into [1531] Huston the next day and I was to meet Mr. Moyle at the plant in Boise—

(Testimony of Boyd Cornia.)

the bulk plant, the next morning, so it was about two o'clock in the morning when I got into Boise and I called up the plant manager which was Mr. Sheppard at that time, and he told me to call Mr. Williams, which I did, and he came down and we unloaded the tires then I went up to the hotel and went to bed. I came down to the plant the next morning to meet Mr. Moyle, and when I got there, he was talking to Mr. McBride. I was standing back there waiting for Mr. Moyle to get through so I could get my orders where to deliver the tanks, and he said that—Mr. Moyle said to Mr. McBride, he said, "You would be a pretty good driver if you didn't have that union button on your cap." He says, "Oh, I don't know, I will be up and join your boys one of these days," and he says, "If you do, I will can every damn one of them."

Q. Who said that? A. Mr. Moyle.

Q. Who made the remark about going up and joining the union? A. Mr. McBride.

Q. Is that all the conversation you overheard?

A. Well, that is all I overheard. I turned and walked away over to my truck where I had parked.

[1532]

Mr. Merrill: We offer Rule No. 1 of the Rules and Regulations [1588] of the Interstate Commerce Commission effective November 15, 1936, the same dealing with a motor carrier engaged in interstate commerce and the requirement covering insurance. Shall I read it into the record?

Trial Examiner Riemer: No.

Mr. Merrill: We also offer Rule No. 5, the same being qualifications of a self-insurer and other securities or agreements.

We also offer that portion of Rule No. 7 reading as follows:

“Motor carriers and brokers subject to the jurisdiction of this Commission are hereby required to maintain in effect at all times the security for the protection of the public contemplated in Sections 211(c) and 215, Motor Carrier Act, 1935, and prescribed by these rules.”

We also offer rule No. 8, dealing with the policies of insurance and their character.

Trial Examiner Riemer: Were those rules in force and effect in November, 1941, Mr. Merrill?

Mr. Merrill: Yes, sir.

Trial Examiner Riemer: Does the Board have any objection, Mr. Penfield?

Mr. Penfield: Well, I think that it is immaterial, but aside from that I have no objection.

Trial Examiner Riemer: It may be admitted in evidence and [1589] marked as Respondent's Exhibit 11.

(Whereupon the document hereinabove referred to was marked and received in evidence as Respondent's Exhibit 11.) [1590]

Mr. Moyle: Comes now respondent, Idaho Refining Company, and at the conclusion of the hearing of this matter and after all sides have rested, and renews the motion which it heretofore made at

the conclusion of the Board's case in haec verba with the understanding that said motion is now predicated and based on all the evidence adduced at this hearing rather than merely the evidence which had been produced by the Board up to the time that the Board rested and the previous motion was made, and if the Examiner will accept this motion renewed in this fashion, the same as though it were re-read into the record, we would appreciate it very much.

Trial Examiner Riemer: I do so accept it, and with respect to your motion as now made, ruling is reserved. [1595]

[Endorsed]: No. 10583. United States Circuit Court of Appeals for the Ninth Circuit. National Labor Relations Board, Petitioner, vs. Idaho Refining Company, Respondent. Transcript of Record. Upon Petition for Enforcement of An Order of the National Labor Relations Board.

Filed October 18, 1943.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

No. 10583

**In the United States Circuit Court of Appeals
for the Ninth Circuit**

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

IDAHO REFINING COMPANY, RESPONDENT

**ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

ALVIN J. ROCKWELL,

General Counsel,

HOWARD LICHTENSTEIN,

Assistant General Counsel,

WILLIAM J. ISAACSON,

ISADORE GREENBERG,

Attorneys,

National Labor Relations Board.

To be argued by :

CHARLES F. McERLEAN,

Attorney.

FILED

FEB 24 1944

PAUL P. O'BRIEN.

INDEX

	Page
Jurisdiction.....	1
Statement of the case.....	2
The nature of respondent's business.....	2
The unfair labor practices.....	3
The Board's order.....	4
Summary of Argument.....	4
Argument.....	5
I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act.....	5
A. Respondent's interference with, domination, and support of the Association in violation of Section 8 (2) and (1) of the Act.....	5
1. Respondent's discriminatory discharge of all 18 of the Pocatello drivers.....	11
2. Respondent's discriminatory discharge of Leo Archibald.....	22
3. The discriminatory discharge of Wayne Douglas.....	27
II. The Board's order is valid.....	29
Conclusion.....	31

AUTHORITIES CITED

Cases :

<i>Bethlehem Steel Co. v. N. L. R. B.</i> , 120 F. (2d) 641 (C. A. D. C.).....	3
<i>DeBardeleben v. N. L. R. B.</i> , 135 F. (2d) 13 (C. C. A. 5).....	10
<i>Firth Carpet Co. v. N. L. R. B.</i> , 129 F. (2d) 633 (C. C. A. 2).....	21
<i>Hamilton-Brown Shoe Co. v. N. L. R. B.</i> , 104 F. (2d) 49 (C. C. A. 8).....	28
<i>H. J. Heinz Co. v. N. L. R. B.</i> , 311 U. S. 514.....	9, 21
<i>Hickory Chair Mfg. Co. v. N. L. R. B.</i> , 131 F. (2d) 849 (C. C. A. 4).....	21
<i>International Ass'n of Machinists v. N. L. R. B.</i> , 311 U. S. 72.....	6, 9
<i>Mooreville Cotton Mills v. N. L. R. B.</i> , 110 F. (2d) 179 (C. C. A. 4).....	31
<i>N. L. R. B. v. Abbott Worsted Mills</i> , 127 F. (2d) 438 (C. C. A. 1).....	21, 22
<i>N. L. R. B. v. Aladdin Industries, Inc.</i> , 125 F. (2d) 377 (C. C. A. 7).....	29
<i>N. L. R. B. v. Aluminum Products Co.</i> , 120 F. (2d) 567 (C. C. A. 7).....	3
<i>N. L. R. B. v. American Mfg. Co.</i> , 132 F. (2d) 740 (C. C. A. 5), cert. den., 63 S. Ct. 1030.....	10
<i>N. L. R. B. v. Automotive Maintenance Machinery Co.</i> , 116 F. (2d) 350 (C. C. A. 7), revised, 315 U. S. 282.....	10

Cases—Continued.

	Page
<i>N. L. R. B. v. Bell Oil & Gas Co.</i> , 91 F. (2d) 509 (C. C. A. 5)-----	3
<i>N. L. R. B. v. Blanton Co.</i> , 121 F. (2d) 564 (C. C. A. 8)-----	28
<i>N. L. R. B. v. J. G. Boswell Co.</i> , 136 F. (2d) 585 (C. C. A. 9)-----	6, 9, 21
<i>N. L. R. B. v. Bradford Dyeing Ass'n.</i> , 310 U. S. 318-----	21
<i>N. L. R. B. v. Carlisle Lumber Co.</i> , 99 F. (2d) 533 (C. C. A. 9), cert. den., 306 U. S. 646-----	31
<i>N. L. R. B. v. Chicago Apparatus Co.</i> , 116 F. (2d) 753 (C. C. A. 7)---	22
<i>N. L. R. B. v. Cities Service Oil Co.</i> , 129 F. (2d) 933 (C. C. A. 2)---	22
<i>N. L. R. B. v. Condenser Corp.</i> , 128 F. (2d) 67 (C. C. A. 3)-----	3, 21
<i>N. L. R. B. v. Electric Vacuum Cleaner Co.</i> , 315 U. S. 685-----	9
<i>N. L. R. B. v. Engelhorn & Sons</i> , 134 F. (2d) 553 (C. C. A. 3)-----	10
<i>N. L. R. B. v. Federbush Co.</i> , 121 F. (2d) 954 (C. C. A. 2)-----	22
<i>N. L. R. B. v. Friedrich, Inc.</i> , 116 F. (2d) 888 (C. C. A. 5)-----	6
<i>N. L. R. B. v. Greenbaron Tanning Co.</i> , 110 F. (2d) 984 (C. C. A. 7), cert. den., 311 U. S. 692-----	8, 9
<i>N. L. R. B. v. Grower-Shipper Vegetable Ass'n.</i> , 122 F. (2d) 368 (C. C. A. 9)-----	11
<i>N. L. R. B. v. Hearst</i> , 102 F. (2d) 658 (C. C. A. 9)-----	21
<i>N. L. R. B. v. Jones & Laughlin Steel Corp.</i> , 301 U. S. 1-----	3
<i>N. L. R. B. v. Link-Belt Co.</i> , 311 U. S. 584-----	9, 10, 12
<i>N. L. R. B. v. Lund</i> , 103 F. (2d) 815 (C. C. A. 8)-----	3
<i>N. L. R. B. v. Luxuray, Inc.</i> , 123 F. (2d) 106 (C. C. A. 2)-----	29
<i>N. L. R. B. v. Moore-Lowry Flour Mills Co.</i> , 122 F. (2d) 419 (C. C. A. 10)-----	6
<i>N. L. R. B. v. National Casket Co.</i> , 107 F. (2d) 992 (C. C. A. 2)---	28
<i>N. L. R. B. v. C. Nelson Mfg. Co.</i> , 120 F. (2d) 444 (C. C. A. 8)-----	30
<i>N. L. R. B. v. New Era Die Co.</i> , 118 F. (2d) 500 (C. C. A. 3)-----	22
<i>N. L. R. B. v. Newport News Shipbuilding & Dry Dock Co.</i> , 308 U. S. 241-----	10
<i>N. L. R. B. v. Pacific Gas & Elec. Co.</i> , 118 F. (2d) 780 (C. C. A. 9)---	21, 22
<i>N. L. R. B. v. Pick Mfg. Co.</i> , 135 F. (2d) 329 (C. C. A. 7)-----	9
<i>N. L. R. B. v. Planters Mfg. Co.</i> , 106 F. (2d) 524 (C. C. A. 4)-----	30
<i>N. L. R. B. v. Remington Rand, Inc.</i> , 94 F. (2d) 862 (C. C. A. 2), cert. den., 304 U. S. 576-----	12
<i>N. L. R. B. v. Rock Hill Printing and Finishing Co.</i> , 131 F. (2d) 171 (C. C. A. 4)-----	22
<i>N. L. R. B. v. Schaeffer-Hitchcock Co.</i> , 131 F. (2d) 1004 (C. C. A. 9)-----	6, 9, 21, 22
<i>N. L. R. B. v. Southern Bell Telephone & Telegraph Co.</i> , 63 S. Ct. 905-----	10
<i>N. L. R. B. v. Sunshine Mining Co.</i> , 110 F. (2d) 780 (C. C. A. 9), cert. den., 312 U. S. 678-----	3, 22
<i>N. L. R. B. v. Superior Tanning Co.</i> , 117 F. (2d) 881 (C. C. A. 7), cert. den., 313 U. S. 559-----	29
<i>N. L. R. B. v. Swift & Co.</i> , 127 F. (2d) 30 (C. C. A. 6)-----	3
<i>N. L. R. B. v. Wm. Tehel Bottling Co.</i> , 129 F. (2d) 250 (C. C. A. 8)---	9
<i>N. L. R. B. v. Torrea Packing Co.</i> , 111 F. (2d) 626 (C. C. A. 9), cert. den., 311 U. S. 668-----	28

III

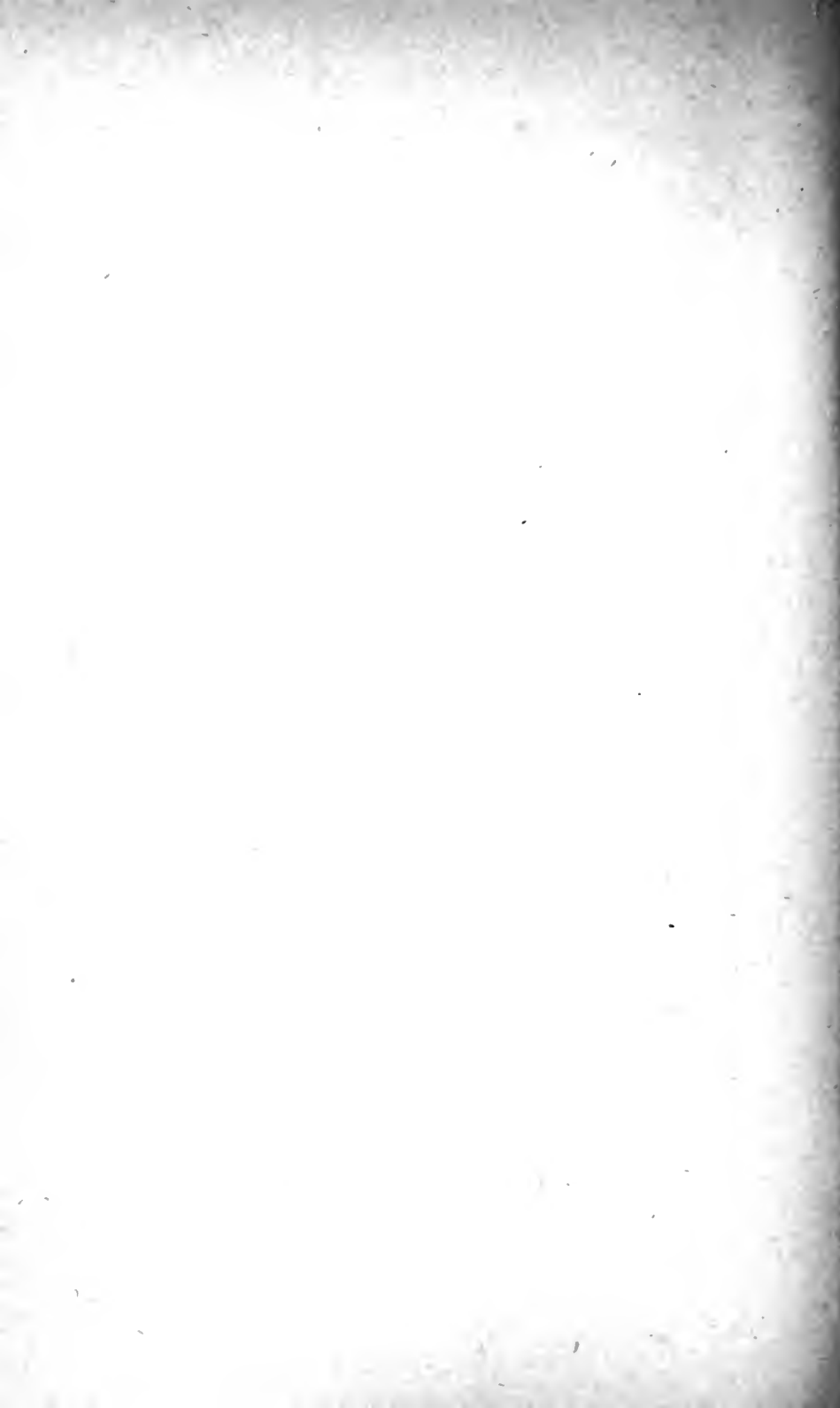
Cases—Continued.

Page

<i>N. L. R. B. v. Trojan Powder Co.</i> , 135 F. (2d) 337 (C. C. A. 3), cert. den., 64 S. Ct. 76-----	10, 11
<i>N. L. R. B. v. Wilson Line</i> , 122 F. (2d) 809 (C. C. A. 3)-----	30
<i>National Licorice Co. v. N. L. R. B.</i> , 104 F. (2d) 655 (C. C. A. 2), aff'd 309 U. S. 350-----	9
<i>New Idea, Inc. v. N. L. R. B.</i> , 117 F. (2d) 517 (C. C. A. 7)-----	6
<i>North Carolina Finishing Co. v. N. L. R. B.</i> , 133 F. (2d) 714 (C. C. A. 4), cert. den., October 11, 1943-----	21
<i>Polish National Alliance v. N. L. R. B.</i> , 136 F. (2d) 175 (C. C. A. 7), cert. den. with respect to this point, 64 S. Ct. 60-----	31
<i>Rapid Roller Co. v. N. L. R. B.</i> , 126 F. (2d) 452 (C. C. A. 7), cert. den., 317 U. S. 659-----	10
<i>Stonewall Cotton Mills v. N. L. R. B.</i> , 129 F. (2d) 629 (C. C. A. 5), cert. den., 317 U. S. 667-----	11
<i>Union Drawn Steel Co. v. N. L. R. B.</i> , 109 F. (2d) 587 (C. C. A. 3)-----	6
<i>Valley Mould & Iron Corp. v. N. L. R. B.</i> , 116 F. (2d) 760 (C. C. A. 7), cert. den., 313 U. S. 590-----	22
<i>Virginia Electric & Power Co. v. N. L. R. B.</i> , 132 F. (2d) 390 (C. C. A. 4)-----	8, 9, 22
<i>Virginian Ry. Co. v. System Federation No. 40</i> , 84 F. (2d) 641 (C. C. A. 4), aff'd 300 U. S. 515-----	10
<i>Westinghouse Electric & Mfg. Co. v. N. L. R. B.</i> , 312 U. S. 660, affirming 112 F. (2d) 657 (C. C. A. 2)-----	10
<i>West Virginia Glass Specialty Co. v. N. L. R. B.</i> , 134 F. (2d) 551 (C. C. A. 4), cert. den., 64 S. Ct. 38-----	9

Miscellaneous:

Robt. R. R. Brooks, <i>When Labor Organizes</i> (1937), pp. 13-19----	8
---	---



In the United States Circuit Court of Appeals for the Ninth Circuit

No. 10583

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

IDAHO REFINING COMPANY, RESPONDENT

ON PETITION FOR ENFORCEMENT OF AN ORDER OF THE
NATIONAL LABOR RELATIONS BOARD

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTION

This proceeding is before the Court upon the petition of the National Labor Relations Board for the enforcement of its order issued against respondent, pursuant to Section 10 (c) of the National Labor Relations Act (49 Stat. 449, 29 U. S. C., Sec. 151, *et seq.*).¹ The Board's decision and order are reported in 47 N. L. R. B. 1127 and are set forth at pages 47-144 of the printed record. The unfair labor practices herein involved occurred in the State of Idaho within this judicial circuit. This Court has jurisdiction of the proceeding under Section 10 (e) of the Act.

¹ The pertinent provisions of the Act are printed in Appendix "A," p. 33, *infra*.

STATEMENT OF THE CASE

Upon charges filed by the Teamsters, Chauffeurs, Warehousemen and Helpers, Local 983, A. F. of L. (herein called the Union) and by the International Association of Machinists, Local No. 198, A. F. of L. (herein called the I. A. M.), and upon the consolidated proceedings under Section 10 of the Act, fully set forth in the Board's decision (R. 67-72), the Board, on February 25, 1943, issued its findings of fact, conclusions of law, and order which, briefly summarized, are as follows:²

1. *The nature of respondent's business (R. 73-74).*—Respondent, a Nevada corporation with its principal office and place of business at Pocatello, Idaho, is engaged in refining, transporting and distributing petroleum and petroleum products. A substantial portion of the finished products is distributed through respondent's wholly owned and controlled subsidiary, the Covey Gas & Oil Company (R. 201-202), and the respondent-controlled Idaho Gas & Oil Company, with which respondent has several officers, executives, and many stockholders in common (R. 197-199, 203-211, 215-216, 307-308, 996-997). Respondent financed Idaho's operations in the amount of a loan of approximately \$295,000 (R. 997).

In 1941 respondent purchased for use in its operations materials and equipment in the amount of

² The Board's decision, except as otherwise indicated therein, adopted the findings of fact, conclusions of law, and recommendations contained in the Intermediate Report of the Trial Examiner (R. 48-58).

\$1,328,000, of which approximately 90 percent was shipped to respondent from sources outside the State of Idaho. In the same period respondent's gross sales totalled \$1,900,000, of which 10 percent was shipped to points outside the State.³

2. *The unfair labor practices* (R. 48-58, 75-126).—The Board found that (1) respondent dominated and interfered with the formation and administration of the Idaho Refining Company Employees' Benefit and Labor Association (hereinafter called the Association) and contributed support thereto, and illegally entered into a contract with the Association in violation of Section 8 (2) and (1) of the Act; (2) respondent discriminatorily discharged 20 of its employees because of their Union membership and activity in violation of Section 8 (1) and (3) of the Act; and (3) that

³ Upon these facts, which are predicated upon undisputed and stipulated evidence (R. 192-197), it is clear that the respondent is subject to the Act. *N. L. R. B. v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, and companion cases; *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 784 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Bell Oil & Gas Co.*, 91 F. (2d) 509, 571-572 (C. C. A. 5); *N. L. R. B. v. Aluminum Products Co.*, 120 F. (2d) 567, 569 (C. C. A. 7). Nor can respondent, upon this statement of the facts (see also pp. 5, 15, *infra*), properly contest the Board's finding (R. 74) that "the relationship between [respondent, Idaho and Covey] is such, and the officials of the respondent have so acted, as to constitute the respondent an 'employer' within the meaning of that term as used in the Act [Section 2 (2) at p. 33, *infra*] of the employees of Covey and Idaho." *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67, 71-72 (C. C. A. 3); *N. L. R. B. v. Swift & Co.*, 127 F. (2d) 30, 32 (C. C. A. 6); *Bethlehem Steel Co. v. N. L. R. B.*, 120 F. (2d) 641, 648-650 (C. A. D. C.); *N. L. R. B. v. Lund*, 103 F. (2d) 815, 819 (C. C. A. 8).

respondent by this and other conduct, including the interrogation of its employees as to their Union membership and antiunion threats, interfered with, restrained, and coerced its employees in violation of Section 8 (1) of the Act.⁴

3. *The Board's order* (R. 61-65).—The Board directed respondent (1) to cease and desist from the unfair labor practices found; (2) to withdraw recognition from and disestablish the Association as a collective bargaining representative of its employees; (3) to cease giving effect to the contract of June 1, 1942, with the Association; (4) to reinstate with back pay certain of the employees discriminated against, hereinafter listed in Appendix "B" at p. 34, *infra*; (5) to award back pay to R. E. Miller⁵ for the period he was discriminated against; and (6) to post appropriate notices.

SUMMARY OF ARGUMENT

I. The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the Act.

II. The Board's order is valid and proper.

⁴ The Board, reversing the finding of the Trial Examiner (R. 134), dismissed the complaint insofar as it alleged that respondent had refused to bargain collectively with the Union in violation of Section 8 (5) of the Act (R. 57).

⁵ Miller, who was found by the Board to have been discriminatorily discharged (R. 48-49, 58), was, subsequent to his discharge, reinstated to his former position as a truck driver (R. 602-604, 918-919).

ARGUMENT

POINT I

The Board's findings of fact are supported by substantial evidence. Upon the facts so found, respondent has engaged in unfair labor practices within the meaning of Section 8 (1), (2), and (3) of the act

A. Respondent's interference with, domination and support of the Association in violation of Section 8 (2) and (1) of the Act

In the fall of 1938, shortly after the refinery at Pocatello, Idaho, was put into operation, an inside organization, the Association, was formed covering the employees of Covey and Idaho, as well as the employees on respondent's payroll (R. 264-268, 385). Association membership was open to and included many of respondent's officials⁶ and "practically all" of its top ranking supervisors (R. 267-268, 300-302). In fact, several of respondent's officers and supervisors held office in the Association and actively participated in its administration. Thus, Secretary Webb, Superintendent Val Gaudet, and Rice, the superintendent of truck drivers, attended the Association's organizational meeting (R. 264, 301-302, 306). Thereafter several of respondent's supervisory employees, including Chief Chemist and Assistant Superintendent Farnsworth (R. 981,

⁶ The following officials of respondent were included within the Association's membership: Arch Webb, secretary (R. 810-811, 816), and Frank Copening, his successor as secretary (R. 632-633, 637, 980-981), John H. Peterson, treasurer of respondent and president of the Idaho Gas & Oil Co., and his successor in these offices, B. J. Albertson (R. 307-308, 394, 399, 981), and Kermit Rice, superintendent of respondent's truck drivers (R. 398, 862).

400, 401-402), Yard Foreman Victor Simpson (R. 328-329), and Foreman C. E. Henninger (R. 904-905, 931-933) continued to play leading roles in the Association's affairs, revising the Association's by-laws, changing its name (R. 330-332, 401-402), and participating in the elections of the Association's officials (R. 401-402). Indeed, Simpson and Henninger each was elected to the office of Association president (R. 328-329, 925-927, 932-933).⁷

Moreover, aside from respondent's dominant role in the administration of the Association through its executives and supervisory employees, the Association was, from its inception, the recipient of respondent's open support. Respondent not only permitted the Association to distribute notices of the organizational meeting on the plant premises during working hours

⁷ Through the acts of its officials and supervisory employees, acts for which respondent is plainly answerable, respondent's role in the formation and administration of the Association is clear and unequivocal. *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 79-80; *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1007 (C. C. A. 9). Such employer participation and control enabling an employer to dictate the policies of an inside organization are among the very evils which Section 8 (2) of the Act is designed to eliminate. As stated by the Report of the Senate Committee in discussing interference proscribed by Section 8 (2) "It exists when [employers] participate in the internal management * * * of a labor organization or when they supervise the agenda or procedure of meetings." Senate Report No. 573, 74th Cong., 1st Sess., p. 10. *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 594 (C. C. A. 9); *N. L. R. B. v. Moore-Lowry Flour Mills Co.*, 122 F. (2d) 419, 424 (C. C. A. 10); *N. L. R. B. v. Ed Freidrich*, 116 F. (2d) 888, 890 (C. C. A. 5); *New Idea Inc., v. N. L. R. B.*, 117 F. (2d) 517, 523-524 (C. C. A. 7); *Union Drawn Steel Co. v. N. L. R. B.*, 109 F. (2d) 587, 591 (C. C. A. 3).

and to post notices on the plant bulletin boards (R. 265), but it allowed the meeting to be held in the refinery office (R. 265). Respondent thereafter permitted the Association to hold all of its meetings on plant premises (R. 271, 325, 330). Association meetings were regularly held in respondent's refinery office until the spring of 1940. Thereafter, meetings were held in the "change room" (bath house), which respondent had constructed at the Association's request, respondent furnishing the materials, and the employees their services (R. 284-285, 329-330).

Respondent did not limit its support to the permitted use of company time and premises, but authorized the Association to maintain soft-drink vending machines and laundry and tobacco concessions on the premises (R. 335-336, 376-382). Payments for purchases from the concessions were provided for in the following manner: Semi-monthly, the Association prepared and submitted to respondent a statement of the amounts due the Association from each employee. Respondent thereupon deducted these amounts from the employees' pay checks and transmitted the total to the Association (R. 381-383, 392-395).

Nor did respondent rely entirely upon the prestige thus given the Association, but shortly after its appearance insured the Association's financial stability by precipitately granting it a check-off of dues (R. 405-408, 982-984),⁸ traditionally the last concession

⁸ Respondent, through its supervisors and officers who were members of the Association and whose dues were accordingly checked off, thereby made a direct financial contribution to the Association.

which employers have been willing to make in their dealings with genuine labor organizations." Respondent admittedly made no effort to ascertain whether the Association represented a majority of the employees (R. 983-984).

In the same fashion, about June 1, 1941, respondent, without determining whether the Association represented a majority, executed a 1-year contract providing for a wage increase and, in effect, granting the Association exclusive recognition (R. 352-354, 338-342, 984).¹⁰ Shortly before the 1941 contract was to expire respondent executed a new contract for a term of 6 months effective June 1, 1942 (R. 318-324, 344-351, 355-357, 942-943, 974). As in the 1941 negotiations, respondent accepted the Association's assurance that it represented a majority of the employees (R. 984). In marked contrast to respondent's unquestioning acceptance of the Association was its subsequent reaction to the Union's request for collective bargaining rights. Respondent not only demanded that the Union furnish proof to substantiate its claim of a majority (R. 1014), but raising the contract with the

⁹ As Robert R. R. Brooks declared in *When Labor Organizes* (1937) at pp. 13-19, "the average employer's opposition to the checkoff is even more intense than to the closed shop." See *Virginia Electric & Power Co. v. N. L. R. B.*, 132 F. (2d) 390, 395 (C. C. A. 4); *N. L. R. B. v. J. Greenebaum Tanning Co.*, 110 F. (2d) 984, 986 (C. C. A. 7), cert. denied 311 U. S. 662.

¹⁰ Although there was no express provision for recognition in the agreement, the wage provision specifically applied to all of respondent's employees except the truck drivers (R. 352-354), and even they were covered by the terms of the renewal contract (R. 357).

Association as a bar, declared that it “didn’t see how [it] could recognize two representatives at the same time” [*ibid.*].

The foregoing summary of the Board’s findings of fact amply supports the Board’s conclusion that respondent dominated and interfered with the formation and administration of the Association and contributed material support to it in violation of Section 8 (1) and (2) of the Act.¹¹ As a corollary thereof the contract of June 1, 1942, executed with the Association constitutes an illegal interference with the rights guaranteed employees in Section 7 of the Act in violation of Section 8 (1). *National Licorice Co. v. N. L. R. B.*, 309 U. S. 350, 364, 366; cf. *N. L. R. B. v. Electric Vacuum Cleaner Co.*, 315 U. S. 685, 695.

Respondent attempted to escape the plain implications of its illegal course of conduct by contending at the hearing and before the Board that : (1) a majority of the employees voted at an Association meeting in 1939 to remain within the Association; and

¹¹ E. g., *International Association of Machinists v. N. L. R. B.*, 311 U. S. 72, 76-79; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 517-519; *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 598-600; *Virginia Electric & Power Co. v. N. L. R. B.*, 132 F. (2d) 310, 395 (C. C. A. 4), aff’d 319 U. S. 533; *N. L. R. B. v. J. G. Boswell Co.*, 136 F. (2d) 585, 593-594 (C. C. A. 9); *N. L. R. B. v. Pick Mfg. Co.*, 135 F. (2d) 329, 331-332 (C. C. A. 7); *N. L. R. B. v. Greenebaum Tanning Co.*, 110 F. (2d) 984, 986 (C. C. A. 7), cert. denied, 311 U. S. 662; *N. L. R. B. v. Wm. Tehel Bottling Co.*, 129 F. (2d) 250, 252-253 (C. C. A. 8); *West Virginia Glass Specialty Co. v. N. L. R. B.*, 134 F. (2d) 551, 552 (C. C. A. 4), cert. denied, 64 S. Ct. 38.

(2) there was no actual proof of the effect upon the employees of respondent's illegal practices (R. 280, 683, 148-149, pars. 4 and 7). Respondent's first contention is foreclosed by judicial decision. The fact that a company union had a majority of the employees as members was deemed immaterial to the issue of domination by the Supreme Court in *N. L. R. B. v. Newport News Shipbuilding and Dry Dock Co.*, 308 U. S. 241 at 248-250. Accord: *Westinghouse Electric & Mfg. Co. v. N. L. R. B.*, 312 U. S. 660, aff'g 112 F. (2d) 657, 659, 661 (C. C. A. 2); *N. L. R. B. v. Southern Bell Telephone & Telegraph Co.*, 319 U. S. 50, 60; *N. L. R. B. v. DeBardleben*, 135 F. (2d) 13, 17 (C. C. A. 5), enforcing 44 N. L. R. B. 1234. With respect to respondent's second contention, it is equally well established that "if the words or deeds of the supervisory employees, taken in their setting, were reasonably likely to have restrained the employees' choice and if the employer may fairly be said to have been responsible for them, they are a proper basis for the conclusion that the employer did interfere." *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 599; *Virginian Railway v. System Federation*, No. 40, 84 F. (2d) 641, 644 (C. C. A. 4), aff'd 300 U. S. 515; *N. L. R. B. v. Automotive Maintenance Machinery Co.*, 315 U. S. 282, rev'g 116 F. (2d) 350, 356 (C. C. A. 7); *N. L. R. B. v. American Manufacturing Company, Inc.*, 132 F. (2d) 740, 742 (C. C. A. 5), cert. denied 319 U. S. 743; *N. L. R. B. v. John Engelhorn & Sons*, 134 F. (2d) 553, 556-557 (C. C. A. 3); *Rapid Roller Co. v. N. L. R. B.*, 126 F. (2d) 452, 457 (C. C. A. 7), cert. denied 317 U. S. 650; *N. L. R. B. v. Trojan Powder Co.*, 135 F. (2d) 337, 339

(C. C. A. 3), cert. denied 64 S. Ct. 76. Cf. *N. L. R. B. v. Grower-Shipper Vegetable Ass'n*, 122 F. (2d) 368, 376 (C. C. A. 9); *Stonewall Cotton Mills, Inc. v. N. L. R. B.*, 129 F. (2d) 629, 631 (C. C. A. 5).

B. Respondent's violations of Section 8 (3) and direct violations of Section 8 (1) of the Act

1. *Respondent's discriminatory discharge of all 18 of the Pocatello drivers*

About the middle of July 1941 respondent's truck drivers at Pocatello, dissatisfied with the wage scale which respondent had promulgated the preceding month (see p. 8, *supra*; R. 500-501, 511, 617-618), decided to establish an outside union (R. 500-501). Accordingly, the truck drivers requested the assistance of the Union and an intensive membership drive began (R. 415-420), which by the end of October resulted in 18 of respondent's 19 drivers stationed at Pocatello joining the Union (R. 483, 501, 219, 239-258). About November 1, a membership meeting was held and a committee appointed to institute negotiations with respondent (Tr. 487-489).¹²

In the meantime, respondent took counter-steps to block the Union. Thus, early in October, Gilbert Moyle, respondent's general manager (R. 191-192), bluntly warned Loren McBride, a Boise driver who was transferring to Pocatello, that his union button would do him no good at Pocatello, adding that if the

¹² Concurrently with the Union's campaign, the I. A. M. began to organize respondent's truck mechanics (R. 414-415). It was at this time that Leo Archibald, a mechanic at Pocatello whose discriminatory discharge is hereinafter discussed (p. 22, *infra*), joined the I. A. M.

Pocatello drivers joined the Union he would "can every one of them" (R. 619-624, 1076-1078). On November 13, Superintendent Kermit Rice approached James Ayers, a Pocatello driver, and, declaring that he had heard that the drivers had joined the Union, inquired as to the purpose of their unionization (R. 484-485).¹³ The next day the Pocatello drivers, having affiliated with the Union despite respondent's open threat to "can" them, were discharged *en masse* (R. 652-653, 953).¹⁴

The anti-union purpose underlying respondent's mass discharge of the Pocatello drivers is clearly revealed by its overt efforts to replace them with non-union drivers. On November 15, the day after the

¹³ In March 1940, Rice, while interviewing Arthur Heckert, an "extra-board" (temporary) driver, inquired whether he belonged to a union. Upon Heckert's reply in the negative, Rice rejoined "that is okeh, Mr. Moyle is strictly against union" (R. 553-554, 562-564).

¹⁴ At the time of the discharge on November 14, the following 18 drivers were stationed at Pocatello (R. 219): James Ayers, S. R. Burkholder, K. C. Brower, Guy E. Campbell, E. B. Cornia, H. L. Davis, Victor Ellingford, John Evans, Leonard Fowler, A. L. Heckert, Henry Henriksen, C. E. Hill, A. S. Merrill, John Ray, Leland Stanford, P. P. Stanger, R. E. Miller, M. D. Whitesides. Although K. C. Brower was not a Union member (R. 493), the Board, as did the Trial Examiner, concluded (R. 53, note 4. 122) that "because of [his] association and employment with the other drivers, the respondent concluded that he too was a Union member and discharged him . . ." *N. L. R. B. v. Link-Belt Co.*, 311 U. S. 584, 589-590 (Novak); *N. L. R. B. v. Remington Rand Inc.*, 94 F. (2d) 862, 871 (C. C. A. 2) (McCoy). R. W. Patterson, whose name appears on the list of drivers operating out of Pocatello, was discharged prior to November 14 (R. 493, 986). There is no allegation or finding by the Board that his discharge was discriminatory.

discharge, General Manager Gilbert Moyle asked Trevor Moss, an applicant for employment, whether he was a union member (R. 567-568). Moss replied in the negative, whereupon Moyle advised Moss, "We have our own Union * * * here in the company, which the employees were free to join any time they wanted to." " * * * [respondent] didn't belong to any [outside] union and didn't intend to" (R. 568-569). In similar fashion, Secretary Copening inquired of another applicant, Merlin Bowman, whether he belonged to a union (R. 572-574). In the same vein Superintendent Rice profanely assured one of the replacements that he had "a job as long as [he] went ahead and [did his] work * * * these sons-of-bitches are never going to drive out here again" (Tr. 631-634). Moreover, respondent diligently attempted to insulate the new drivers at Pocatello from all union influences. Thus, when District Manager Stiff (R. 212, 626, 957) instructed the drivers at Baker, Idaho (members of a union, see p. 28, *infra*), in January 1942 that they were to be transferred to Pocatello, he warned that Gilbert Moyle had advised him that they were not to discuss union affairs or associate with the Pocatello drivers "in that capacity" (R. 626-627). Stiff explained that Moyle had experienced "trouble with the laborers in the union capacity" and did not desire a repetition of that experience (R. 627-628).

Respondent's motive in discharging the drivers at Pocatello is further revealed by its threat to repeat this tactic at Boise if necessary. On November 16, 2 days after the mass discharge at Pocatello, W. A.

Sheppard, district manager of respondent's Boise office (R. 468-469), called at the home of Roy Williams, a nonunion driver at Boise (R. 467, 475), and inquired whether two of his fellow drivers, Ray Pittman and Mervin Zollman, were members of a union (R. 472). Williams replied that he had no knowledge concerning their union affiliation (R. 473) and refused Sheppard's urgent request to secure such information (*ibid.*). Sheppard thereupon replied that if the two drivers in question had joined a union he would "use" recent accidents in which they had been involved "as an excuse" for their discharge (*ibid.*).

Further proof of the fact that respondent's discharge of the Pocatello drivers was dictated by its manifest desire to wipe out the focal point of unionization are the frank statements of its supervisory staff in explanation of the discharges. Thus, about March 10, 1942, Foreman Rice advised R. E. Miller¹⁵ that the discharged drivers would "be working now" if, when they had become dissatisfied with their wages, they "had come to the office instead of going uptown" to the Union (R. 605-606). In December 1941, Henninger admitted to Evans, one of the discharged drivers, that since he knew that the "fellows belonged to the Union a long time before [they] were fired" (R. 510), perhaps Evans was right in ascribing the dis-

¹⁵ R. E. Miller, one of the drivers discharged on November 14, 1941, was subsequently rehired as a driver on March 10, 1942, by Foreman Henninger because, as Henninger testified, an important shipment which "had to get * * * delivered" was being held up because "there wasn't any drivers available" (R. 919). Henninger rehired Miller without consulting any of his superiors (*ibid.*).

charge of the Pocatello drivers to their Union affiliation.

Despite the conclusive proof of discrimination herein set forth, respondent contended before the Board that it was compelled to discharge the Pocatello drivers solely because of the cancellation of its accident and liability insurance policy covering its automotive equipment and the necessity for acquiring new insurance. The Board, viewing the mass discharge against the above antiunion background, and carefully considering the facts surrounding the cancellation of the insurance policy, rejected respondent's contention. The Board held that "respondent was opposed to the unionization of the Pocatello drivers and that their Union membership and activities were the motivating cause of their discharge" (R. 53). We submit that a brief résumé of the facts surrounding the cancellation demonstrates the propriety of the Board's holding.

On August 22, 1940, the automotive equipment of respondent (passenger cars, light and heavy gasoline trucks, trailers and semitrailers, R. 761, 1065) as well as the equipment of Idaho and Covey (R. 758), were insured under a 1-year policy issued by the Firemen's Insurance Company of Newark, New Jersey, and the Metropolitan Casualty Insurance Company of New York, both of which are hereinafter referred to as the insurance company (R. 642-643, 645-646, 743-744, 754). A single policy was issued since all 3 corporations "were so closely interwoven" (R. 722, 727). During the term of the policy, from August 1940 to August 1941, the insurance company paid out claims

exceeding 100 percent of the policy's allotted premium (R. 722-723, see also R. 106, footnote 21). Despite the insurance company's reluctance to renew the policy, a new policy was issued on August 22, 1941 (R. 722-725). Respondent's accident record, however, showed no signs of improvement. Between August 22, and November 5, 1941, inclusive, the insurance company paid 13 claims arising out of accidents involving the insured equipment (R. 674-678, 724-725, 749-753, 786-793; see also R. 107, footnote 22). Finally, on November 8, 3 days after one of respondent's drivers, Patterson, was involved in a major accident,¹⁶ the insurance company advised Gilbert Sheets, respondent's president (R. 794-795), that it was compelled to cancel the current policy because of the "frequency of collisions and resulting damage claims" (R. 795, 717). On November 10 the insurance company advised Secretary Copening at Pocatello that the cancellation was to be effective November 17 (R. 646-647, 747, 551-552). On November 13, after a conference between Vice-President Henry Moyle and General Manager Gilbert Moyle at Pocatello, it was decided to discharge only the Pocatello drivers (R. 649-651, 952-953, 1002-1003). The next day all 18 of the Pocatello drivers, including 9 of whom had never been involved in an accident,¹⁷ were summarily discharged.

¹⁶ Patterson, who was forthwith discharged as a result of this accident, was not alleged to have been discriminatorily discharged (R. 493, 986. See p. 12, footnote 14, *supra*).

¹⁷ The discharged drivers who had never had accidents were Ayers (R. 481), Brower, Campbell, Davis, Heckert, Hill, Ray, Stanford, and Miller (R. 509, 558, 602).

Upon the foregoing recital of the facts it is plain, as the Board found (R. 49), that "half of the discharged drivers * * * did not contribute to the loss ratio or accident frequency." Of the 9 drivers involved in accidents only 5 had accidents resulting in claims against the insurance company (See footnote 20.) Moreover, respondent cannot justify its inclusion of 9 efficient and careful drivers among the discharged drivers by claiming as it did before the Board, that the records of the individual drivers were not before the management between November 8, the date it was notified of the impending cancellation, and November 14, the date of the discharge. It is clear from the record, as the Board found (R. 49), that the employment records of the individual drivers were readily available at Pocatello on November 13 when the discharge action was decided upon (R. 650-652, 881-887, 974-975). Nor is respondent's position strengthened by assuming, as it urges,¹⁸ that the discharges were decided upon at

¹⁸ The evidence of respondent's witnesses is conflicting as to where and when respondent determined to make the discharge. President Sheets and Vice-President Henry Moyle testified that they conferred in Salt Lake City on November 12 and made their decision at that time (R. 798-799, 1002). On the other hand, Secretary Copenig testified that the decision to discharge the Pocatello drivers was made in Pocatello on November 13 (R. 650-651). Finally, the testimony of Gilbert Moyle concerning the time and place of the discharge contained several inconsistencies. He testified on direct examination that Henry Moyle advised him on November 13 that the decision to discharge the employees had already been made at Salt Lake City (R. 953). On cross-examination he testified that the decision was made in Pocatello (Tr. 1411). Later in his testimony he reverted to his original position (R. 979). The Board's resolution of this conflicting evidence is, of course, conclusive.

Salt Lake City on November 12, since the accident records of respondent's drivers were admittedly available there (R. 796, 1019, 802, 808). Respondent's further contention that it did not have time to effect a segregation of the drivers is patently spurious. Clearly, respondent had an adequate opportunity in the six days between November 8 and 14 to check the records of its drivers.

The speciousness of respondent's several defenses is further laid bare by its argument that in order to acquire new insurance it was compelled to view the Pocatello drivers as a single group. The answer to this contention is, as the Board found (R. 51), that "it is unlikely that any insurance company would have required the respondent to discharge drivers with perfect records and hire new ones whose ability in handling the drivers' equipment had not been tested. On the contrary, it would seem that the incentive to the insurance company's issuance of a policy would have been greater if respondent had discharged only those drivers with accident records." Respondent in its brief before the Board admitted that the insurance company did not suggest the discharge of the Pocatello drivers. Nor, in light of the surrounding evidence, does respondent add to its argument by adverting to a letter dated November 24, 1941, addressed to respondent from a local insurance broker, in which a quotation for new insurance was submitted because respondent had discharged "all drivers" in its employ (R. 768-769). H. F. Benson, who was responsible for the letter, explained that he knew only that respondent had a high loss ratio and

that the accidents were generally due to careless driving (R. 771). He added that he was not advised by respondent that half of the drivers stationed at Pocatello had not been involved in accidents (R. 771). Upon this posture of the facts it is clear why Benson made no distinction between respondent's drivers with accidents and those without.¹⁹ Moreover, Benson revealed that he submitted a bid to insure respondent's equipment upon the representation that the "drivers who have had the accidents had been discharged" (R. 763). Benson further testified that if he knew that "particular drivers" were responsible for a bad loss ratio he would, before submitting a policy, demand only that those drivers be removed (R. 770).

As a matter of fact, not all of the drivers operating equipment covered under the policy were discharged. Indeed, respondent utterly failed to take action with respect to any of its drivers stationed outside of Pocatello, although several of them materially contributed to both the high loss ratio and accident frequency. In comparison with the accident record of the Pocatello drivers, 9 of whom had never been involved in accidents,²⁰ 7 of the drivers stationed

¹⁹ Equally unpersuasive is the testimony of Henry Moyle that on November 17, Watkins, the insurance broker, through whom respondent obtained a new policy on that date, advised that he could not have considered issuing a policy to respondent if the drivers had not been discharged (R. 1009). It is clear from the record that Watkins, like Benson, was ignorant of the true state of affairs (R. 781-782).

²⁰ Not all accidents involving respondent's equipment resulted in claims against the insurance company since the policy limited payment by the insurance company to the amount of "collision" damage to respondent's equipment in excess of \$100 (R. 746).

outside of Pocatello had been involved in accidents.²¹ Of the 12 drivers who had had accidents resulting in claims against the insurance company, 7 were drivers stationed at points other than Pocatello. (See footnotes 20 and 21.)

In sum: It is clear from the above review of the facts that the cancellation of the insurance policy did not provoke the discharge of the Pocatello drivers but served rather as a shield behind which petitioner carried out its "manifested desire to be rid of employees who [became] union members."²² *Dannen Grain v. N. L. R. B.*, 130 F. (2d) 321, 329 (C. C. A. 8).²³

The Pocatello drivers who had had accidents upon which the insurance company paid claims and the amount of the claim paid in each case:

Patterson (R. 750)_____	\$625.00
Ellingford (R. 751, 789)_____	112.50
Henricksen (R. 755)_____	2,298.53
Whitesides (R. 751-752, 789)_____	2,094.10
Cornia (R. 755)_____	2,500.00

²¹ Drivers at stations other than Pocatello who had had accidents upon which the insurance company paid claims and the amount of the claim paid in each case were:

Pearson (R. 674)_____	\$1,549.00
Douglas (R. 787-789)_____	2,068.95
White (R. 750, 751-752)_____	779.04
Zollman (R. 787)_____	90.35
Crawshaw (R. 750)_____	26.45
Walker (R. 792)_____	25.10
Conrad (R. 786)_____	7.00

See also p. 14, *supra*.

²² See discussion of discriminatory discharges of Archibald and Douglas at pp. 22-27 and 27-29, *infra*.

²³ See also *N. L. R. B. v. Polson Logging Co.*, 136 F. (2d) 314 (C. C. A. 9); *N. L. R. B. v. J. G. Boswell*, 136 F. (2d) 585, 592 (C. C. A. 9); *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67, 76 (C. C. A. 3); *N. L. R. B. v. Algoma Net Co.*, 124 F. (2d) 730, 732 (C. C. A. 7).

“The explanation of the discharge offered by respondent did not stand up under scrutiny. This fact in itself strengthens the inference drawn by the Board from the other facts in the case.” *N. L. R. B. v. Abbott Worsted Mills*, 127 F. (2d) 438, 440 (C. C. A. 1), that respondent discharged the Pocatello drivers because they persisted, despite respondent’s open antagonism, in affiliating with the Union and participating in Union activities. See *Boswell* case, *supra*, at p. 595; *N. L. R. B. v. Condenser Corp.*, 128 F. (2d) 67, 75 (C. C. A. 3); *North Carolina Finishing Co. v. N. L. R. B.*, 133 F. (2d) 714, 718 (C. C. A. 4), cert. denied 64 S. Ct. 39; *Hickory Chair Mfg. Co. v. N. L. R. B.*, 131 F. (2d) 849, 850 (C. C. A. 4); *Firth Carpet Co. v. N. L. R. B.*, 129 F. (2d) 633, 635 (C. C. A. 2).

It is equally clear from the above summary of the facts that respondent, aside from the discriminatory character of the discharges in violation of Section 8 (3) and (1), independently interfered with, restrained, and coerced its employees in violation of Section 8 (1). Respondent’s conduct featuring threats of discharge, grilling of employees with respect to their union affiliation and attempts to insulate them from Union influences repeatedly has been recognized as violative of Section 8 (1). E. g. *N. L. R. B. v. Bradford Dyeing Association*, 310 U. S. 318, 325, 327; *H. J. Heinz Co. v. N. L. R. B.*, 311 U. S. 514, 518; *N. L. R. B. v. Hearst*, 102 F. (2d) 658 (C. C. A. 9); *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1007–1008 (C. C. A. 9); *N. L. R. B. v. Pacific Gas & Electric Co.*,

118 F. (2d) 780, 788 (C. C. A. 9); *N. L. R. B. v. Sunshine Mining Co.*, 110 F. (2d) 780, 786 (C. C. A. 9), cert. denied 312 U. S. 678; *N. L. R. B. v. Rock Hill Printing and Finishing Co.*, 131 F. (2d) 171 (C. C. A. 4); *N. L. R. B. v. Cities Service Oil Co.*, 129 F. (2d) 933, 934 (C. C. A. 2). Nor does the First Amendment afford a shield for respondent's conduct. The right of free speech does not include the right to coerce employees; employees are protected from such coercion when manifested in words, oral or written. *N. L. R. B. v. Virginia Electric & Power Co.*, 314 U. S. 469, 477-478; *N. L. R. B. v. Schaefer-Hitchcock Co.*, 131 F. (2d) 1004, 1007 (C. C. A. 9); *N. L. R. B. v. New Era Die Co.*, 118 F. (2d) 500, 505 (C. C. A. 3); *N. L. R. B. v. Chicago Apparatus Co.*, 116 F. (2d) 753, 756-757 (C. C. A. 7); *Valley Mould & Iron Corp. v. N. L. R. B.*, 116 F. (2d) 760, 766 (C. C. A. 7); *N. L. R. B. v. Federbush Co.*, 121 F. (2d) 954, 957 (C. C. A. 2).

2. Respondent's discriminatory discharge of Leo Archibald

Archibald was employed by respondent as a truck mechanic and welder at Pocatello from January 1941 to November 14, 1941, on which date he and the Pocatello drivers were discharged (R. 219, 412-413, 421). During the period of his employment Archibald's wages were increased from 50 to 60 cents per hour (R. 658).

At the time of his discharge, Archibald was one of the outstanding Union proponents. Although, as a

mechanic, he was ineligible for membership in the Union, he occupied a leading role in the drivers' organizational campaign which culminated in their decision to affiliate with the Union (R. 415-416). In fact, Archibald arranged for the Union organizer to address the drivers (R. 417).²⁴ After the drivers' affiliation with the Union he continued to participate in their union activities, soliciting memberships and collecting initiation fees and dues in the plant outside working hours, and attending several Union meetings (R. 418-420, 564, 596-597, 684, 685-687, 690). In view of the widespread character of Archibald's activities, many of which took place in the plant, and the smallness of the plant, the Board properly inferred (R. 54, 99) that respondent had full knowledge of Archibald's Union activities. *N. L. R. B. v. Abbott Worsted Mills*, 127 F. (2d) 438, 439 (C. C. A. 1).²⁵

On November 14, Archibald, after reporting for work, was peremptorily discharged without prior notice or warning (R. 421). Respondent set forth as the ground for the discharge Archibald's frequent absence from work (R. 421, 423). During the hearing respondent sought to substantiate this assertion by pointing out that he was absent from work 37 days, including 25 Sundays, during the 10-month tenure of his

²⁴ In the latter part of October or early part of November 1941, Archibald joined the International Association of Machinists, Local 198, which was then organizing respondent's mechanics (R. 414, 418, 432).

²⁵ Significantly, Kermit Rice, Archibald's foreman (R. 331), inquired of him concerning the Union affiliation of the Pocatello drivers (R. 450).

employment (R. 657). The record, however, discloses that respondent's mechanics did not have fixed hours of work, being subject to call at any hour of the day or night, including Sundays and holidays (R. 427, 851-852, 874-875), and that it was customary, insofar as possible, for mechanics to have every other Sunday off (R. 427, 852). Further, it was the accepted procedure for mechanics who normally worked more than 40 hours a week as Archibald did (R. 427-430),²⁶ to "lay off" an "extra day" (R. 852-853). This "extra day" could be taken at any time, either in the middle of the week or in combination with a free Sunday (*ibid.*). In either case it was unnecessary to secure respondent's permission beforehand (*id.*).

A comparison of Archibald's work record with those of his fellow mechanics establishes that he absented himself from work no more frequently than they. Illustrative of this fact are the respective records of Mechanics Boyer and Thomas: Boyer was absent 16 days, including 9 Sundays, over a 3-month employment period between June 1 and August 23, 1941, and Thomas was "off" 8 days, including 5 Sundays, between September 3 and November 13 (R. 1071, 1072). Upon all these facts the Board properly rejected (R. 54) respondent's contention that Archibald's discharge was based on his absences during his 10-month period of employment.

²⁶ Archibald worked an average of 9 to 9½ hours per day, 7 days a week, during the entire period of his employment (R. 427-430, 438-440).

Equally unavailing as a justification for Archibald's discharge is respondent's reference during the hearing to an incident that had occurred the preceding June, more than 5 months before the discharge. On that occasion, Archibald, while welding a gasoline tank, burned a small hole in the tank (R. 442-444, 451-452). Patently, as the Board found (R. 53-54), this "minor dereliction," antedating the discharge by more than 5 months, "was not the motivating cause for the discharge."²⁷ Nor can respondent point to Archibald's admitted slowness on an occasion some 8 or 9 months before the discharge (R. 426-427) as a basis for its action. The Board credited Archibald's testimony that since that time he had not been reprimanded on this account (R. 426, 442).

Highlighting the discriminatory character of respondent's discharge of Archibald is the fact that Archibald, who was active in organizing the truck drivers at Pocatello, was discharged the very day that their employment was terminated. Respondent sought to avoid the implications arising out of their simultaneous discharge by attempting to show that the decision to discharge Archibald was made prior to November 14, but not later than November 10, the

²⁷ Further attempting to justify its discharge of Archibald, respondent sought to show that several times he appeared at work intoxicated. The Board, carefully detailing the evidence (R. 98-105), rejected respondent's inconsistent and varying testimony and accepted Archibald's denial of the charge (R. 421, 444, 445, 466). It would serve no useful purpose at this time to repeat the testimony set forth in the Board's decision.

date of his last alleged "dereliction."²⁸ That "this position is untenable," as the Board found (R. 54-55), is demonstrated not only by the many inconsistencies in the testimony of respondent's witnesses as to when Archibald's discharge was determined, but by the absence of a consistent explanation as to why respondent selected November 14. Foreman Rice first testified that he had to wait until they "caught up" with their work (R. 877, 879). On the other hand, Sub-foreman Brown, as well as Rice himself, admitted that their mechanics were as busy as ever at the time of Archibald's discharge (R. 897, 846, 849). Rice later shifted his testimony stating that he was compelled to wait until he found another mechanic (R. 877-878). The falsity of this latter assertion is clear; it is not only undisputed that mechanics were available between November 10 and 14, but that respondent waited until November 20, 6 days after the discharge, before replacing Archibald (R. 878).

In conclusion, it is plain that Archibald, a prime mover in the drivers' organizational campaign, was summarily discharged the same day as the drivers whom he was instrumental in organizing. In the light of respondent's pattern of anti-unionism, coupled with

²⁸ See footnote 27, *supra*. Foreman Rice testified that on November 10 he reprimanded Archibald for appearing at work with a so-called "belly ache," which, in Rice's opinion, was caused by drinking (R. 871, 879). The Board, carefully reviewing the testimony, credited Archibald's denial that he had been drinking or that he had been reprimanded (R. 54-55).

its inability to advance a credible explanation for his discharge, the Board was entitled to conclude (R. 104) that the real reason for his discharge was respondent's desire to eliminate all of the Union's supporters.

3. *The discriminatory discharge of Wayne Douglas*

Douglas was first employed by respondent in January 1940, as a truck driver, and stationed at Baker, Oregon (R. 535-536). In September 1941 he was transferred to Pocatello (R. 537-538), where, on September 29, he joined the Union (R. 538-539, 586, 244). Shortly thereafter he was retransferred to Baker (R. 539), where he was working at the time of his discharge on November 20, 1941 (R. 542). On that date he was peremptorily discharged by Bert Stiff's secretary,²⁹ Mrs. Stiff, who instructed Douglas "not to pull any more trips, and not to ask any questions" (R. 543).

Respondent contended before the Board that Douglas was discharged because of an accident in which he was involved at Weiser, Idaho, on October 16, 5 weeks before the discharge (R. 787-789, 540-541). This contention is directly refuted by the record. In the first place, on October 29, as soon as the truck involved in that accident was repaired and put back into service, Douglas resumed work, driving continuously until his discharge (R. 540-543, 861). As the

²⁹ The operations at Baker were under the supervision of Stiff (R. 216, 536, 626, 861, 957).

Board properly found (R. 55-56), had respondent discharged Douglas because of the Weiser accident it would not have delayed 5 weeks before acting. Moreover, at the time of Douglas' discharge by Mrs. Stiff, no reference was made to the Weiser accident. In fact, when Douglas went to Pocatello a day or two after the discharge, and asked General Manager Gilbert Moyle and Secretary Copening for an explanation, he was told that "he was fired for the same reason as the rest of the drivers were, on account of the insurance was cancelled" (R. 543, 545-547).

It is plain from the above summary of the Board's findings of fact that the Weiser accident to which Douglas' discharge was belatedly attributed was resurrected to serve as an "excuse" for ousting a Union member [*N. L. R. B. v. Blanton Co.*, 121 F. (2d) 564, 570 (C. C. A. 8)], especially since "[it was] not mentioned as such at the time of discharge" (*Hamilton Brown Shoe Co. v. N. L. R. B.*, 104 F. (2d) 49, 53 (C. C. A. 8)). See also *N. L. R. B. v. Tovrea Packing Co.*, 111 F. (2d) 626, 629 (C. C. A. 9), cert. denied 311 U. S. 668; *N. L. R. B. v. National Casket Co.*, 107 F. (2d) 992, 997-998 (C. C. A. 2).

Respondent, attempting to avoid the consequences of its discriminatory action, argued that since five other drivers who belonged to a Teamster's local other than the charging union, continued in respondent's employment at Baker (R. 543-544), the Board was foreclosed from finding a violation of Section 8 (3) with respect to Douglas. Respondent's argument

misconceives the basis of the Board's decision; the Board found (R. 56-57) that Douglas was selected for discharge because he was identified by respondent with a particular union, "the Pocatello group." The Circuit Courts of Appeals, rejecting similar contentions, have repeatedly held that an inference of discrimination is not necessarily rebutted by a showing that the employer has not discriminated against other union members. *N. L. R. B. v. Superior Tanning Co.*, 117 F. (2d) 881, 889 (C. C. A. 7), cert. denied 313 U. S. 559; *N. L. R. B. v. Luxuray, Inc.*, 123 F. (2d) 106, 108-109 (C. C. A. 2); cf. *N. L. R. B. v. Aladdin Industries*, 125 F. (2d) 377, 384-386 (C. C. A. 7), cert. denied 316 U. S. 706.

POINT II

The Board's order is valid

The Board's order (R. 61-65) is in the usual form upon the findings made. In addition to the normal cease and desist provisions, it requires respondent to withdraw recognition from and disestablish the Association, to cease giving effect to the contract of June 1, 1942, with the Association, to reinstate with back pay all of the employees listed in Appendix "B,"³⁰

³⁰ The Board found that drivers Cornia, Henricksen, Merrill, Douglas, and Whitesides were discriminatorily discharged (R. 59-60). Since they had been involved in serious accidents (see p. 20, *supra*), however, the Board (R. 60), exercising its administrative discretion as to the proper means of effectuating the purposes of the Act, did not require their reinstatement nor award them back pay.

and to award back pay to R. E. Miller for the period during which he suffered discrimination (R. 64). As previously noted (p. 14, footnote 15 *supra*), Miller, subsequent to his discriminatory discharge, was reinstated as a truck driver.

No proper issue is raised by respondent's contention (R. 895-896) that the Board was precluded from directing the reinstatement of 4 of the discharged drivers³¹ since they were "extra board" (temporary) drivers who would, absent discrimination, nevertheless have been discharged that same winter. The Board's order merely requires the reinstatement of the employees discriminated against to their former or substantially equivalent positions in the event that such positions are available, and awards back pay only for those periods during which they would have worked, absent discrimination. Cf. *N. L. R. B. v. Nelson Mfg. Co.*, 120 F. (2d) 444, 446 (C. C. A. 8); *N. L. R. B. v. Planters Mfg. Co.*, 106 F. (2d) 524 (C. C. A. 4); *N. L. R. B. v. Wilson Line*, 122 F. (2d) 809, 813-814 (C. C. A. 3). But in any event, as the Board found (R. 59), respondent's contention is not borne out by the instant record. It is undisputed that by November 20, within 6 days of the discharge of the 18 Pocatello drivers, including the 4 in question, all the drivers were replaced (R. 901), and that from that date to March 28, 1942, the number of drivers employed at Pocatello averaged 19 (R. 220-221).

³¹ Guy Campbell, Howard Davis, John Roy, and Leland Stanford.

Equally without merit is respondent's further objection to the order of reinstatement based upon its offer to reinstate several of the drivers to employment as loaders on the loading dock (R. 909-917).³² It is clear from the record (R. 902) that, wholly aside from the disparity in earnings between the two types of employment,³³ the nature of the duties and the skill required in each are materially different. Accordingly, the Board properly concluded that respondent's offer did not constitute an offer of substantially equivalent employment (R. 58-59). See *Polish National Alliance v. N. L. R. B.*, 136 F. (2d) 175 (C. C. A. 7), certiorari denied with respect to this point 64 S. Ct. 60; cf. *N. L. R. B. v. Carlisle Lumber Co.*, 99 F. (2d) 533, 539 (C. C. A. 9), cert. denied 306 U. S. 646; *Mooresville Cotton Mills v. N. L. R. B.*, 110 F. (2d) 179, 180-181 (C. C. A. 4).

CONCLUSION

It is respectfully submitted that the Board's findings are supported by substantial evidence, that its order is valid and proper, and that a decree should issue en-

³² Of the drivers ordered reinstated by the Board, only one, K. C. Brower, accepted respondent's offer of employment as a dock-loader, which job he held from about December 18, 1941, until he left respondent's employment in February 1942 (R. 914-915).

³³ The Board found (R. 58, footnote 11) that, assuming the testimony of respondent's witness, Foreman Henninger, to be correct, a dockloader would earn about \$158.60 per month, as compared with \$175 per month then being paid to respondent's drivers (R. 902).

forcing said order in full as prayed in the Board's petition for enforcement.

ALVIN J. ROCKWELL,
General Counsel,

HOWARD LICHTENSTEIN,
Assistant General Counsel,

WILLIAM J. ISAACSON,
ISADORE GREENBERG,
Attorneys,
National Labor Relations Board.

FEBRUARY 1944.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are as follows:

SEC. 2 (2). The term "employer" includes any person acting in the interest of an employer, directly or indirectly, * * *.

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

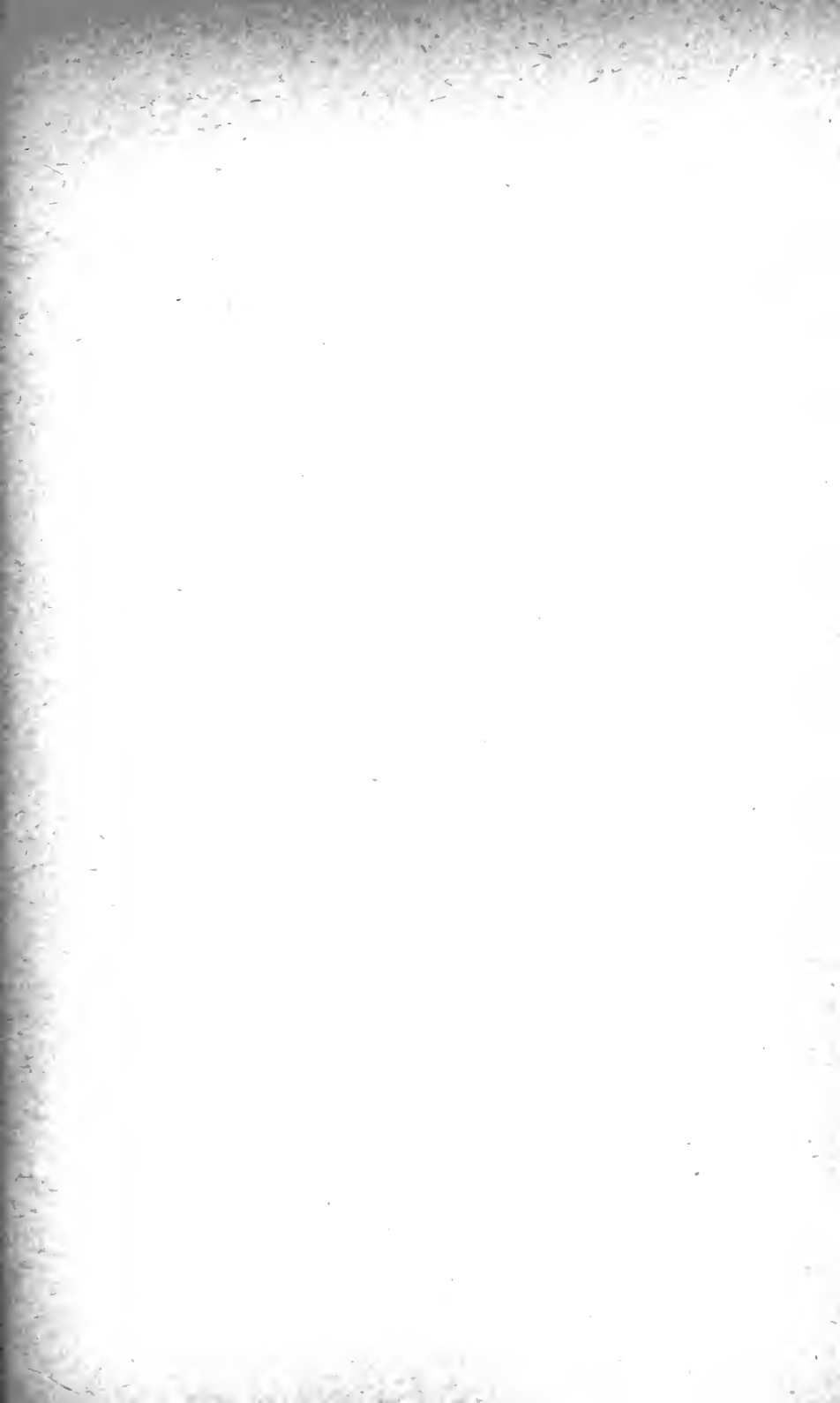
(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: * * *

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

APPENDIX B

Leo Archibald
James Ayers
K. C. Brower
S. R. Burkholder
Guy Campbell
Howard Davis
Victor Ellingford
John Evans
Leonard Fowler
Arthur Heckert
Carl Hill
John Ray
Leland Stanford
P. P. Stanger





IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

IDAHO REFINING COMPANY,

Respondent.

On Petition for Enforcement of an Order of the
National Labor Relations Board

Brief for Respondent
Idaho Refining Company

FILED

MAR 30 1944

PAUL P. O'BRIEN,
CLERK

HENRY D. MOYLE

DAVID L. MCKAY

Residence: Salt Lake City, Utah

A. L. MERRILL

R. D. MERRILL

Residence: Pocatello, Idaho

Attorneys for Respondent

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

No. 10583

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

IDAHO REFINING COMPANY,

Respondent.

On Petition for Enforcement of an Order of the
National Labor Relations Board

Brief for Respondent
Idaho Refining Company

HENRY D. MOYLE

DAVID L. McKAY

Residence: Salt Lake City, Utah

A. L. MERRILL

R. D. MERRILL

Residence: Pocatello, Idaho

Attorneys for Respondent

INDEX

	Page
Statement of the Case.....	1
Summary of Argument.....	5
Argument:	
I. Substantial Evidence.....	6
II. Respondent's Alleged Interference with and Domination of the Association.....	9
1. The Association.....	9
2. Alleged Interference and Coercion.....	18
III. Respondent's Alleged Violations of Sections 8 (3) and 8 (1), as it refers to Discharges.....	22
1. Pocatello Truck Drivers.....	22
2. Leo Archibald.....	40
3. Wayne Douglass.....	49
4. Board's Unfounded Inferences of Discrimination.....	53
IV. The Order of the Board.....	59
V. Conclusion.....	61

AUTHORITIES CITED

Cases:	Page No.
Ballston-Stillwater Knitting Co., Inc. vs. N. L. R. B. 98 Fed. (2d) 758, 761, 764.....	13-48
C. G. Conn, Ltd. v. N. L. R. B. 108 Fed. (2d) 390, 400.....	21
Hazel-Atlas Glass Co. v. N. L. R. B. 127 Fed. (2d) 109, 117.....	8
Interlake Iron Corp. v. N. L. R. B. 131 Fed. (2d) 129, 133.....	8-50
Jefferson Electric Co. v. N. L. R. B. 102 Fed. (2d) 949, 956.....	16-31
Magnolia Petroleum Co. v. N. L. R. B. 112 Fed. (2d) 545.....	57
Martel Mills Corp. v. N. L. R. B. 114 Fed. (2d) 624.....	21-23
N. L. R. B. v. Dixie Motor Coach Corp. 128 Fed. (2d) 201, 203.....	39-45
N. L. R. B. v. Goodyear Tire & Rubber Co. 129 Fed. (2d) 661, 664.....	56
N. L. R. B. v. Grower-Shipper Assn. 122 Fed. (2d) 368, 375.....	9
N. L. R. B. v. Jones & Laughlin S. Corp. 301 U. S. 1, 81 L. Ed. 893, 896.....	31
N. L. R. B. v. Mathieson A. Works 114 Fed. (2d) 796.....	56
N. L. R. B. v. Remington Rand, Inc. 94 Fed. (2d) 862.....	23

N. L. R. B. v. Riverside Mfg. Co.	
119 Fed. (2d) 302.....	58
N. L. R. B. v. Sands Mfg. Co.	
306 U. S. 332, 346, 83 L. Ed. 682.....	20-21
N. L. R. B. v. Sheboygan Chair Co.	
125 Fed. (2d) 436, 439.....	45
N. L. R. B. v. Sparks-Withington Co.	
119 Fed. (2d) 78, 81.....	11
N. L. R. B. v. Standard Oil Co.	
124 Fed. (2d) 895, 903.....	9
N. L. R. B. v. Sun Shipbuilding & Dry Dock Co.	
135 Fed. (2d) 15, 25.....	9
N. L. R. B. v. Swank Products, Inc.	
108 Fed. (2d) 872, 874.....	12
N. L. R. B. v. Tex-O-Kan Flour Mills Co.	
122 Fed. (2d) 433, 438.....	58
N. L. R. B. v. Thompson Products, Inc.	
97 Fed. (2d) 13, 16.....	46
N. L. R. B. v. Union Manufacturing Co.	
124 Fed. (2d) 332.....	30
N. L. R. B. v. Union Pacific Stages	
99 Fed. (2d) 153, 177.....	6-31
N. L. R. B. v. U. S. Truck Company	
124 Fed. (2d) 887, 889.....	47
N. L. R. B. v. Williamson-Dickie Mfg. Co.	
130 Fed. (2d) 260, 267.....	32
Quaker State Oil Refining Co. v. N. L. R. B.	
119 Fed. (2d) 631.....	19
Wilson & Company v. N. L. R. B.	
123 Fed. (2d) 411, 418.....	49



IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

No. 10583

NATIONAL LABOR RELATIONS BOARD.

Petitioner.

vs.

IDAHO REFINING COMPANY.

Respondent.

On Petition for Enforcement of an Order of the
National Labor Relations Board

Brief for Respondent
Idaho Refining Company

STATEMENT OF THE CASE

The Idaho Refining Company (hereinafter called the Respondent) presents herewith a statement of its case because it is thought advisable, for a clearer understanding of its position hereinafter stated, to present to the Court the defenses which it asserts.

The Respondent is a corporation organized under the laws of Nevada with its principal place of business in Pocatello, Idaho. It is engaged in refining, transporting and distributing petroleum and petroleum products. Its refinery is located at Pocatello, Idaho. From this point refined products are trans-

ported to various points of use. Transportation of its oils and gasoline has been principally by trucks and transports. For this purpose it has had in its employ in the last few years from fifteen to twenty truck drivers.

There has also been established by the Respondent a machine shop wherein its trucks and motor vehicles have been repaired. In this machine shop four men were engaged in the year 1941. One of them was Leo Archibald, who was discharged when his work became unsatisfactory.

In addition to the employees above referred to, the Respondent engaged others in various capacities and for various types of work, aggregating approximately ninety employees.

The Respondent also owned a distributing company, called Covey Gas & Oil Company of Idaho. It also had business relations with the Idaho Gas & Oil Company, an independent corporation (R.215-16). The activities of these two latter companies were devoted largely to the sale of the products refined by the Respondent.

In the Fall of 1938, shortly after the Respondent commenced business, its employees organized the Idaho Refining Company Employees' Benefit Association (hereinafter called the Association). The Respondent had nothing to do with the organizing of this Association (R.264). Its objective was to afford financial benefits in times of need to members of the Association (R.266). Some time later the articles and by-laws were amended by changing the name to include the words, "and Labor" (R. 270, 317).

The Respondent carried insurance coverage on its motor equipment with the Firemen's Insurance Company of New Jersey and the Metropolitan Casualty Company of New York. The accident record of the truck drivers became alarming. On November 10, 1941, the Respondent was advised by its insurance carriers that due to the high loss ratio the policy of insurance would be cancelled effective November 17, 1941 (R.551). The management of the Respondent knew of no way to secure other insurance than to discharge the truck drivers and employ new ones. This was done and new insurance was obtained (R.1009). Leo Archibald, who had been employed for several months, had been guilty of drunkenness and inefficiency in his work and was discharged at the same time (R.865-875). After the discharge of Leo Archibald and the truck drivers certain individuals, claiming to represent the Teamsters, Chauffeurs, Warehousemen and Helpers Local No. 983 A. F. L., interviewed the officers of the Respondent with reference to collective bargaining for its employees.

In June 1942 a consolidated complaint was filed by the Board which charged that the Respondent had dominated and interfered with the formation and administrations of the Idaho Refining Benefit and Labor Association and had restrained and coerced its employees in the exercise of their right of self organization and had discharged the Truck Drivers and Leo Archibald for Union activities and had refused to bargain collectively with the Teamsters' Union.

Respondent denied the charges. It recognized the Idaho Refining Company Benefit and Labor Association as a labor organization within the meaning of Section 2, subdivision 5

of the Act and asserts that it has dealt honorably with this Association and that it had no part in its organization and has at no time interfered with its operation or dominated or in anywise coerced any of its employees or interfered with any of their rights in any labor practice. It admits that it discharged Leo Archibald, but alleges that his discharge was for inexcusable conduct connected with his work and not for Union activities. It admits that it discharged certain truck drivers operating large transports from the Pocatello plant to points of distribution and engaged new truck drivers, and alleges that it did so because its insurance on the said automotive equipment had been cancelled by the insurance carriers due to numerous accidents sustained by the drivers and a high loss ratio and that this was the only apparent way to secure new insurance coverage, and that said discharge was not because of Union activities of said drivers and had no connection therewith. It has always been ready and willing to bargain collectively with any appropriate unit lawfully representing its employees and has at no time refused to bargain with any duly authorized Labor representatives. Other affirmative defenses will be referred to in the argument to follow.

The cause was tried before an Examiner in August, 1941 ,who reported against the Respondent on all issues. The Board refused to adopt all of the Examiner's findings and, by a divided opinion, asserted that it found violations of the Act with respect to the Association and that the truck drivers and Leo Archibald had been discriminatorily discharged, but that Respondent had not refused to bargain

collectively as charged in the complaint (R. 57, 65). By its order the Board directed the dis-establishment of the Association with various desist orders and further ordered reinstatement with back pay sufficient to make whole the machinist, Archibald, and thirteen discharged truck drivers, some of whom had been involved in minor accidents, but refused to order reinstatement or back pay of five of the discharged truck drivers who had been involved in "serious" accidents (R.60). It dismissed the charge that the Respondent had refused to bargain with the union. The Board now seeks a decree from this Court for enforcement of its Order which Respondent resists upon various grounds hereinafter stated and, particularly, upon the ground that those findings of the Board which were against the Respondent and the Order based thereon are not supported by substantial evidence and are against the law.

SUMMARY OF ARGUMENT

The findings of the Board are not supported by substantial evidence and, accordingly, the order based thereon cannot be enforced. The Association was not promoted or organized by the Respondent, and the Respondent did not dominate nor support it, nor coerce its employees in any particular. The Pocatello truck drivers were discharged because Respondent's liability insurance had been cancelled due to numerous accidents within the group and in order to secure new insurance and not because of union activities of the drivers. Leo Archibald was discharged because of misconduct and inefficiency and without knowledge on the part of his

employer that he was a member of the union. Wayne Douglas was discharged because of misconduct and serious damage caused by him to the company's property. There was no discrimination against any discharged employee.

The order of the Board is invalid and improper because it is not supported by substantial evidence and is against the law.

ARGUMENT

I.

SUBSTANTIAL EVIDENCE

The decisions of the courts uniformly are to the effect that the Board's findings are conclusive upon the courts only if the same are supported by substantial evidence. Respondent contends that such evidence is lacking in this case. As a preface to the argument which follows it is suggested that consideration be given to the type and character of evidence necessary to support such findings. This Court said in *National Labor Relations Board vs. Union Pacific Stages*, 99 Fed. (2d) 153, on page 177:

"It is suggested that this court should accept the findings of the Board; that contradictions, inconsistencies, and erroneous inferences are immune from criticism or attack by Section 10 (e) of the Act, 49 Stat. 453, 29 U. S. C. A. Sec. 160 (e), which provides that 'the findings of the Board as to the facts, if supported by evidence, shall be conclusive.' But the courts have not construed this language as compelling the acceptance of findings arrived at by accepting part of the evidence and totally disregarding other convincing evidence.

“ ‘We are bound by the Board’s findings of fact as to matters within its jurisdiction, where the findings are supported by substantial evidence; but we are not bound by findings which are not so supported. 29 U. S. C. A. Sec. 160 (e) (f) ; Washington, Virginia & Maryland Coach Co. vs. National Labor Relations Board, 301 U. S. 142, 57 S. Ct. 648, 650, 81 L. Ed. 965. * * * Substantial evidence is evidence furnishing a substantial basis of fact from which the fact in

issue can reasonably be inferred; and the test is not satisfied by evidence which merely creates a suspicion or which amounts to no more than a scintilla or which gives equal support to inconsistent inferences. Cf. Pennsylvania R. Co. vs. Chamberlain, 288 U. S. 333, 339-343, 53 S. Ct. 391, 393, 394, 77 L. Ed. 819.’ Appalachian Electric Power Co. vs. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989.

“ ‘Substantial evidence’ means more than a mere scintilla. It is of substantial and relevant consequence and excludes vague, uncertain, or irrelevant matter. It implies a quality of proof which induces conviction and makes an impression on reason. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom and, considering them in their entirety and relation to each other, arrives at a fixed conviction.

“ ‘The rule of substantial evidence is one of fundamental importance and is the dividing line between law and arbitrary power. Testimony is the raw material out of which we construct truth and, unless all of it is weighed in its totality, errors will result and great injustices be wrought.’ National Labor Relations Board vs. Thompson Products, Inc., 6 Cir. 97 F. 2d 13, 15.”

In the case under consideration, numerous inferences are argued by the Board in support of its findings. There is no definite direct evidence in the record to support any of said findings. In the case of *Inter-Lake Iron Corporation vs. National Labor Relations Board* 131 Fed. (2d) 129, on page 133, it is said:

“But an inference cannot be piled upon an inference, and then another inference upon that, as such inferences are unreasonable and cannot be considered as substantial evidence. Such a method could be extended indefinitely until there would be no more substance to it than the soup Lincoln talked about that was ‘made by boiling the shadow of a pigeon that had starved to death.’ *National Labor Relations Board vs. Empire Furniture*, 6 Cir., 107 F. (2d) 92, 95; *National Labor Relations Board vs. Illinois Tool Works*, 7 Cir., 119 F. (2d) 356.”

In *Hazel-Atlas Glass Co. vs. National Labor Relations Board*, 127 Fed. (2d) 109, the Court, in defining substantial evidence on page 117, said:

“‘Substantial evidence’ is more than a scintilla, and must do more than create a suspicion of the existence of the fact to be established. ‘It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.’ *Consolidated Edison Co. vs. National Labor Relations Board*, 305 U. S. 197, 229, 59 S. Ct. 217, 83 L. Ed. 126, and it must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. *National Labor Relations Board vs. Columbian Co.*, 306 U. S. 292, 300, 59 S. Ct. 501, 83 L. Ed. 660.”

To the same effect see:

National Labor Relations Board vs. Sun Shipbuilding & Dry Dock Co., 135 Fed. (2d) 15, on page 25;

National Labor Relations Board vs. Grower-Shipper v. Association, 122 Fed. (2d) 368, 375;

National Labor Relations Board vs. Standard Oil Co., 124 Fed. (2d) 895, 903.

Relying on the standards announced in the preceding cases and many others of like effect, the Respondent urges that the Court consider the entire record in this case and the evidence adduced by the Respondent as well as that introduced by the Board. That the Board in its brief seems to recognize the necessity of doing this is evidenced by frequent references made to the testimony of the Respondent's witnesses. When the evidence is so considered, it is earnestly urged that the Court must conclude that the board's findings of unfair labor practices on the part of the Respondent are not supported by substantial evidence.

II.

RESPONDENT'S ALLEGED INTERFERENCE WITH,
DOMINATION, AND SUPPORT OF THE ASSOCIA-
TION IN VIOLATION OF SECTIONS 8 (1) AND 8 (2)
OF THE ACT.

1. *The Association*

The Board ordered the Respondent to cease and desist from:

- (a) Dominating or interfering with the administration

of the Association or with the formation or administration of any other Labor organization of its employees or from contributing financial or other support to this organization or any other labor organization;

(b) From recognizing the Association as the labor representative of its employees;

(c) From performing or giving effect to the contract entered into between the Respondent and the Association.

The Respondent is not defending the Association as such and has no desire to deal with the Association in preference to any other organization which the employees might choose to represent them. The Respondent does, however, object to this Order because of its implication that the Respondent has violated the Act. We wish to point out that there is no evidence of any defined act, or set of acts, of the Respondent to form or to recognize the Association in preference to any other labor organization. What the Board relies on as evidence of interference was rather a cooperation and feeling of good will between the Respondent and its employees in the growing pains of a newly formed and rapidly expanding company.

The Association was initiated and organized by George Hibbler and George Mann, both of whom were simple employees and neither of whom had any supervisory authority (R. 264-266; 811-812). It was organized first to afford health and accident benefits for the employees (R. 266) and developed later into a bargaining agent (R. 318). The Respondent had nothing to do with its organization (R. 264, 969). The membership in the Association of some of the

supervisory employees to which objection is made by the Board is limited to their enjoyment of the health and accident benefits derived from it (R. 928, 638, 824). The Association then performed a double function. It afforded accident benefits for its members and, at the same time, constituted a bargaining unit. The supervisory employees would obviously be interested in its first function. In every instance in the testimony, however, in which it appeared that the Association acted in the capacity of a bargaining unit the supervisory employees were absent. That this was its policy is shown by the insistence at one time by the Association that the foreman Henninger leave the meeting when a discussion of wages was about to begin (R.928).

The dual function of a similar Association was approved by the Sixth Circuit Court of Appeals in *National Labor Relations Board vs. Sparks-Withington Co.*, 119 Fed. (2d) 78. The Court said on page 81:

"It is true that 8 or 10 supervisory employees joined the Society and solicited members, spoke favorably of it, kept membership cards on their desks, etc. It is unnecessary to detail these instances. So far as the record shows, the assistance of these persons derived from the confusion of functions of the Society in its early days rather than from any attempt on the part of the company to 'dominate' or 'contribute * * * support' to the Society. A few members were obtained in this manner who stated they would not have joined the Society had they known it was a collective bargaining agency. Some withdrew when they were so informed but the record is devoid of evidence that the company dominated the Society, interfered with its internal functioning, contributed any money to it or any appreciable support within the meaning of the

Act. The minutes of the Society indicate that the meetings were held free from any coercion or interference and it appears that the members freely set up committees for discussion of their rights and grievances with the company."

The Board's petition for an order of enforcement was denied.

If the respondent is to be criticized at all, it is for its indifference to the activities of its foremen—not for any active participation. There was no participation or interference with the Association on the part of the Respondent company and it should not be penalized for the interest of some of its supervisory employees in retaining the individual financial benefits of their membership in it.

In *National Labor Relations Board vs. Swank Products, Inc.* (C. C. A. 3d) 108 Fed. (2d) 872, the court said, on page 874:

"The Act does not purport to prohibit plant, or so-called 'company' unions, except where they are linked to the employer. That relationship does not arise from passive acquiescence of an employer, for acquiescence has none of the positive and aggressive quality contemplated by such words as 'interfere', 'restrain,' 'coerce,' and 'dominate,' which we find in the Act. The evidence in this case shows, we think, a genuine, if rare attempt on the part of the employees to form their own intramural union, to prevent what they considered might be a less advantageous external organization bringing them to the lower level of competing shop conditions. This had been the experience of the toolmakers which employees in other departments did not wish to follow.

"Nor do we think that the acts of Stevenson and the other shop supervisors, in forming and trying to control the policy of the new Association, were tied to the management. They were acting, so far as the evidence shows, spontaneously and for themselves. Because men express dislike to organized labor does not, as the Board suggests in its argument, indicate that they must be acting for the management."

In *Ballston-Stillwater Knitting Co., Inc. vs. National Labor Relations Board*, (C. C. A. 2d) 98 Fed. (2d) 758, at page 761, it is said:

"This is not the case of a 'company union' whose formation was initiated by the employer in order to combat the efforts of an outside union to organize his employees. The testimony is uncontradicted that the officers of the petitioner had no hand in establishing the Association. It is true, as the Board found, that the chief reason for its formation was to keep out the CIO, but the plan of an 'inside' union was apparently the spontaneous reaction of a group of the employees, who circulated their petitions, got up their own meetings, engaged their own attorney to draft the constitution and by-laws, and paid their expenses, without suggestion or help by the petitioner. Concededly the petitioner made no financial contributions. It is true that the petitions for membership were circulated in the mills without protest by the management, and that employees who attended the April 9th meeting during working hours were not docked in pay. But it is also true that solicitation of members for the CIO occurred, as Ingersoll testified, during working hours. Mrs. Dandareau, a witness not friendly to the petitioner, testified that a notice was posted on the time clock to the effect that it was not necessary to belong to any organization to work in the plant, and several other witnesses said that they were treated no differently by the petitioner after they joined the CIO.

That certain CIO members were watched, or believed they were, more closely by the foreladies for infraction of the rules against leaving their machines and conversing is too weak a reed to support an inference of discrimination amounting to domination and interference in the formation of the Association. Nor is the fact that employees who attended the April 9th meeting were not docked in pay sufficient evidence of domination or interference. There was no discrimination between those who favored the 'inside' union and those who favored the CIO. No one was docked, because, as the superintendent explained, he thought that if he was liberal and did not interfere with meetings the trouble would blow over. So far as we can see the officials of the petitioner held the scales evenly balanced while the contest for membership in the two labor organizations was proceeding."

The alleged financial assistance given the Association, upon analysis, is not assistance at all by the Respondent to the Association, but, rather, financial assistance of the Association to the Respondent. There were small, incidental advantages given to the Association, such as "check-off" of dues, the operation of a vending machine and laundry concession on the Respondent's property, the insurance payment of dues by the supervisory employees and the meetings of the Association in the Company's buildings. Balancing these items is the complete construction by the members of the Association of the meeting place and change house, later called "Simpson Hall." This was built on the company's premises, and the hall belongs to the company (R.304). The company, however, furnished only the materials, and all of the labor was donated free by the Association. Notwithstanding this contribution the Association has not had the exclusive use of the hall. In

spite of this large contribution of the Association the company did not favor it over others and the advantages of meeting on the premises were open equally to 'outside' unions. August Rosqvist, Secretary of the Idaho State Federation of Labor and Pocatello Labor Council, was invited to address a group of employees, meeting on the company's property, for the purpose of explaining the benefits of union organization (R.681). Clearly the evidence does not show financial advantages, or support, or domination of the Association by the Respondent in any respect.

Emphasis is placed by the Board's brief on the fact that the Respondent entered into the contract with the Association, renewed it, and requested the union to furnish proof of majority. It is strange that this should be argued after the Board reversed the Examiner's finding that the Respondent's request to the Union for proof that it represented a majority constituted an unfair labor practice. We submit that the most natural reaction for anyone who has already entered into a contract and is asked to break that contract is to ask for reasons to support the request. It is argued by the Board that in contrast to this request for proof of Brandt's and Rosqvist's authority, the Respondent accepted the Association without question. The obvious answer to this argument is that the Respondent knew its employees and did not know Brandt or Rosqvist, nor whether they represented those whom they professed to represent.

The contract with the Association, moreover, resulted after arbitration and refusal on the part of the Respondent to grant the wage increases demanded by the Association (R.

320-323, 344-345). This was also true of the original contract in 1941. The wage scale adopted by the company and accepted by the Association contained an increase which was not as much as had been demanded (R.275). The company consented to the wage scale agreed upon on the condition that the Association would sign a contract for one year (R. 275, 341). The contract was drawn by the attorney for the Association (R. 342).

All of the members of the Association who testified, including even the witnesses for the Board, stated that there was no influence brought upon them by the Respondent. John Anderson, for example, said: "I don't think that the company ever influenced the Association whatsoever in any way." (R.295). See also Haskell Duncan's and Delmar Peter's testimony (R. 333, 334, 339).

It is submitted that the evidence does not show any interference or domination on the part of the Respondent in the Association affairs. It does show a cooperation and good will between employer and employees. Such cooperation should be encouraged, rather than discouraged, by the Board.

In *Jefferson Electric Company vs. National Labor Relations Board* (C. C. A. 7th) 102 Fed. (2d) 949, it is held:

"The National Labor Relations Act does not manifest intent to prohibit friendly intercourse between employers and labor organizations, to curtail freedom of speech, to deprive the employer of the right to express honest opinions, or to outlaw the extension of common courtesies, and sponsoring of friendship between employer and employees is in keeping with the purpose of the Act."

This case further holds that while the Act condemns employer leadership through supervisory employees, and pressure which overrides employees' will constitutes interference with workers' rights to select representatives, yet a mere showing of preference and acts of cooperation do not constitute such interference. On page 956, the Court says:

"In the instant case there were no threats so as to intimidate the employees into joining a particular labor organization against their will, and there is no evidence in the record which would warrant a finding that the conduct of the company was indicative of coercion or intimidation. To us it is clear that the company had come to a realization that its plant was about to be unionized. It had for many years maintained friendly relations with its employees and desired that such relations continue. It was in this spirit that it allowed the use of the cafeteria and other plant privileges. Such acts, standing alone, are not inconsistent with a strict 'hands-off' policy. It was never the intention of Congress to prohibit friendly intercourse between employers and labor organizations, to curtail freedom of speech, to deprive an employer of his right to express an honest opinion or to outlaw the extension of common courtesies. It is more in keeping with the purpose of the Act to foster such friendship rather than to condemn it."

We have mentioned that there is no proof of actual interference or domination on the part of the Respondent in Association affairs and that the acts of the Respondent's supervisory employees did not affect the other employees. On page 10 of its brief the Board cites cases which it claims hold that there is no need of actual proof of the effect of the practices

upon the employees. The statement quoted⁽¹⁾ and cases cited are not in point. If there is a direct violation of a specific act prohibited by Section 8 (2) or Section 8 (3), probably the effect upon employees need not be shown, but we submit that a violation of Section 8 (1) or that part of Section 8 (2) which makes it an unfair practice to dominate or interfere with the formation or administration of any labor organization requires a showing of effect upon the employees. In all the cases cited on page 10 of the Board's brief there is evidence that some of the employees were influenced or there were no facts to rebut the inference drawn that the acts would reasonably have restrained the employees' choice. In the case at bar, however, the definite evidence of the witnesses is that the Respondent did not influence the employees (R. 295, 333-4, 359). This evidence necessarily rebuts a mere inference that the Respondent's acts did influence them.

2. Alleged Interference and Coercion

On pages 11 to 14 of its brief, the Board refers to several statements which it contends indicates an anti-union attitude on the part of the Respondent.

Aside from the fact that there is no substantial evidence indicating that, even if made, any of them had any effect whatever on any employee, it is urged by the Respondent that they are wholly insufficient to constitute substantial evidence

⁽¹⁾ "If the words or deeds of the supervisory employees, taken in their setting, were reasonably likely to have restrained the employees' choice and if the employer may fairly be said to have been responsible for them, they are a proper basis for the conclusion that the employer did interfere."

to prove any charges of the Board. They are presented by the Board in an effort to show attempts to block union activities and as possible reasons for discharge. We wish to examine such statements alleged to have been made and to show why the same could not have the effect indicated by the Board.

These statements are mentioned in the Board's brief as part of its discussion of the discriminatory discharges, and we shall refer to them in detail later in our discussion of those discharges. All of these statements are testified to by interested drivers and denied by those who allegedly made them. Many of them are pure hearsay. The Board found that they were made. If its finding is persuasive there is still no evidence that such statements, at any time, influenced the employees or were made for the purpose of influencing them. They were sporadic, unauthorized statements which were contrary to what the respondent's acts, its practice and its attitude to the unions are shown to be.

In *Quaker State Oil Refining Company vs. National Labor Relations Board* (C. C. A. 3rd) 119 Fed. (2d) 631, it is held:

"Isolated and casual conversations by superintendents with men concerning the advisability of proposed union which had not the slightest effect in preventing or discouraging membership in the union did not support finding that employer was responsible for the statements of superintendents and that it thereby interfered with, restrained and coerced its employees in the exercise of rights of self-organization and collective bargaining guaranteed them by the National Labor Relations Act."

On page 632 the Court says:

"The Board found the petitioner guilty of two unfair

labor practices. The first was that two supervisory employees by their statements to individual employees discouraged membership in the Union. The supervisors in question were Healy, the field or pipe line superintendent, and McElhatten, the superintendent of maintenance at the refinery. Healy asked one employee what the employees figured could be gained by membership in the Union and said that it would be lots cheaper and the employees just as far ahead, if they hired a local attorney to represent them rather than putting out quite a lot of money and not getting much in return for it. He made similar remarks to another employee and declared to a third who said he hoped to gain seniority rights that there was no such thing. To a fourth he said he did not see how the union could benefit the employees and that he believed the petitioner would shut the plant down before giving recognition to it. McElhatten stated to one employee with reference to the welding of certain tubes that prior to the Union that work would have to be done at the petitioner's shop but after the Union they intended to send the work away. He also said that in future they would let out to contractors what work they could. He made a similar statement to another employee. In the case of Healy none of the employees to whom he talked was under his supervision.

"It is quite clear that all of these conversations took place casually in the course of conversations between the individuals concerned. There is no evidence that they had the slightest effect in actually preventing or discouraging membership in the Union."

So, in the case under consideration, if any of these statements were made they were casually made and without the slightest effect in actually preventing or discouraging membership and do not support the charge of coercion and domination.

In National Labor Relations Board vs. Sands Manufac-

turing Company, 306 U. S. 332-346, 83 L. Ed. 682, at page 688 the Court says:

“The Board supports the conclusion by reference to the testimony of two men. One, Norman, who was, with the union’s consent, discharged after the agreement of June 15, 1935, for incompetency, testified he thought he was discharged as a result of a grudge. He said that in June, one McKiernan, a shipping clerk who was his superior, told him when he complained about his discharge: ‘I will tell you; there is a lot more of this than you and I know of * * * ‘I will get you back when we break this union up.’ * * * There is the further testimony of a witness Rudd who says that the superintendent said to him in June, in effect, that it would be better to have the A. F. of L. union as they were more conservative and not so likely to strike. This was just after MESA had called two strikes in the plant. Neither of the men who are quoted held such a position that his statements are evidence of the company’s policy even in June, two months before the discharge, and the inference of hostility to MESA drawn from their testimony does not, in any event, amount to a scintilla when considered in the light of respondent’s long course of conduct in respect of union activities and in dealing freely and candidly with MESA.”

In the case of *Martel Mills Corp. vs. National Labor Relations Board*, (C. C. A. 4th) 114 Fed. (2d) 624, it is held:

“In the absence of evidence of any policy of proscribed discrimination, an employer should not be held strictly accountable for every isolated utterance of a policy-making officer concerning union activities.”

See also *C. G. Conn. Ltd. vs. National Labor Relations Board* (C. C. A. 7th) 108 Fed. (2d) 390, 400.

Even assuming that the statements which it is charged were made were actually uttered, though their alleged authors em-

phatically denied having made them, it is respectfully submitted that in the light of the foregoing cases there is completely lacking any substantial evidence to prove that such statements had any effect, or to prove that they amounted to more than harmless, casual remarks.

III.

THE RESPONDENT'S ALLEGED VIOLATIONS OF SECTION 8 (3) AND SECTION 8 (1), AS IT REFERS TO DISCHARGES.

1. The Discharge of the Pocatello Truck Drivers

On November 13, 1941, the Respondent discharged all of the truck drivers who were driving heavy equipment at Pocatello. The Board found that this discharge was discriminatory. It based this finding upon its conclusion that the discharge was made because the drivers had joined the Union. The Board concluded this because of random statements that officers of the company were antagonistic to unions. It concluded this in spite of a complete lack of evidence that the cause of discharge was the Union membership and in spite of the uncontradicted evidence that the officers who effected the discharge knew nothing about the Union membership of the drivers (R. 800, 1003, 1004). Opposed to these inferences and conclusions of the Board is the positive testimony introduced by Respondent that it discharged these drivers because its liability insurance had been cancelled and because its officers concluded that the only way to obtain new insurance was to show to the new insurance companies that the major cause of its accident record had been eliminated.

Respondent submits that it would be manifestly unfair to enforce an order of the Board based as it was, upon inferences opposed to the clear testimony showing why the discharge was made.

In the case of *Martel Mills Corporation vs. National Labor Relations Board*, 114 Fed. (2d) 624, on page 631, the Fourth Circuit Court of Appeals said:

“Obviously our chief guide is the words of the witness under oath who undertook to disclose the workings of his mind. If his explanation is a reasonable one, the onus is upon the Board to establish the falsity of this explanation and the truth of its own interpretation. See *National Labor Relations Board vs. Remington Rand, Inc.*, 94 Fed. 2nd at page 862. We are not convinced that the Board has offered sufficient evidence to meet its burden of proof. Isolated statements which alone carry incriminating import often lose their ominous significance when surrounded by all the facts of a given case. We do not find substantial evidence to support any illegal motive such as is proscribed by Section 8 (3) of the Act.”

The Board found that eighteen drivers who were discharged on November 14th from the Pocatello plant were dismissed because of their union membership, though the evidence is uncontradicted that the decision to discharge these men was arrived at by officers who knew nothing of their union activities. It was made in an emergency requiring drastic measures to re-obtain insurance coverage, without which the plant could not distribute its gasoline. The insurance policy covering the trucks the discharged drivers were operating had been cancelled by the insurance companies due to a high loss ratio as the result of a series of accidents. The president and

vice president of the company, one of them an active insurance agent and the other an attorney with many years of insurance experience (R. 794, 1021), both decided that in order to obtain new insurance it was necessary to terminate the services of these drivers and present a different picture to the insurance company to whom they were applying for new insurance (R. 800, 1003). Whether their judgment was right or wrong is immaterial. This Board had no right to pass upon the wisdom of their decision. In view of the findings, however, it is necessary to look in retrospect at the reasonableness of their decision in order to show the inaccuracy of the Board's inference that union activities of the drivers were the cause of their discharge.

The history of the difficulties encountered by the Respondent and the necessity for the decision to discharge the drivers may be briefly summarized. The insurance for the respondent on its motor equipment was carried by the Firemen's Insurance Company of Newark, New Jersey, and the Metropolitan Casualty Company of New York, under Policy No. FM-199. This Policy expired August 22, 1941. There had been serious losses under this Policy and the insurance companies had become uncertain as to whether or not the policy should be renewed (R. 795, 797). Mr. Little, representing the insurance companies, had frequently criticised these losses (R.725) and had made certain personal observations of excessive speed on the part of the drivers of the trucks (R.720-722). From his study of the losses he concluded that the trucks and equipment were in good mechanical condition and that the losses were due to the fault of the drivers (R.718).

A short time before August 22, 1941, Gilbert Sheets, President of the Respondent, and Little met with a Mr. Chadwick, Little's superior, in Salt Lake City, and discussed the losses and the possibility of a renewal. It was thought that probably the drivers would improve and that the losses might be minimized (R. 724, 796). Accordingly, Policy FM-227 was issued as of August 22, 1941. Between this date and November 3, 1941, eleven accidents occurred, causing thirteen losses (R. 752) aggregating about \$4,000.00 (R. 724). The major portion of these losses, and particularly in amount, was with the truck drivers driving the large transports from the Refining Company to distributing points. The insurance companies thereupon concluded that they would not continue to carry the insurance. On November 10, 1941, they sent a telegram to the Idaho Refining Company as follows (R.551):

"Idaho Refining Company—Due to high loss ratio experienced on equipment owned by your corporation for past few years we are cancelling off Policy FM-227 by registered cancellation notice to be effective November 17, 1941, noon standard time. Please make other arrangements for insurance.

FIREMEN'S INSURANCE COMPANY OF
NEWARK, NEW JERSEY

METROPOLITAN CASUALTY COMPANY OF
NEW YORK, NEW YORK."

Usually five days' notice is given under such circumstances before cancellation becomes effective, but in this instance Mr. Little, who sent the telegram, knew the serious difficulty the Respondent would have in getting new insurance and accordingly extended the date of cancellation (R. 730, 798). Before

sending the telegram Mr. Little had given oral advice to Gilbert D. Moyle, the manager of the respondent, and to Gilbert S. Sheets, the President. Mr. Sheets lived in Salt Lake City. The entire matter was referred to him. He at once attempted to communicate with Henry D. Moyle, Vice-President and Attorney for the Company, but Mr. Moyle was in San Francisco. He returned to Salt Lake City on the evening of November 11th and on November 12th Mr. Sheets and Mr. Moyle had a conference in which they considered the cancellation of the insurance and determined upon the policy to be pursued (R. 799, 1002). Mr. Sheets and Mr. Moyle, by virtue of their insurance experience knew the attitudes of insurance companies toward such matters. They fully understood that new insurance could not be obtained without some drastic change. Sheer business necessity required insurance coverage. In addition thereto some of these trucks were engaged in interstate commerce and the Interstate Commerce Rules required insurance in all instances where the company could not qualify to carry its own insurance. The respondent, in this instance, was not able to do this (R. 1012, 854). These men concluded that there could be no reasonable expectation to secure other insurance unless these drivers were discharged. They "decided at that time that [they] would either have to do that or quit business" (R. 1002). The time was short. A decision had to be quickly made. They could not change the equipment; they could not change the job to be done; hence the only conclusion they could reach was that they must change the drivers (R. 1005). The various officers of the company had been frequently criticized because of high losses and frequent wrecks caused by the drivers (R. 756, 796, 1001).

In arriving at the decision to discharge the drivers these officers were actuated with the sole purpose of continuing the business of the respondent. The activities of the drivers with the unions or their membership in the union never entered into the picture and these officers had no knowledge of such claimed membership or activities (R. 801, 1003-4). There is no proof in the record contradicting this fundamental item of evidence. The decision to discharge the drivers was arrived at in Salt Lake City by Gilbert S. Sheets and Henry D. Moyle on November 12, 1941, and it was agreed that Mr. Moyle should go to Pocatello on the day following and advise the General Manager to carry out this instruction (R.1005).

The conclusion of Mr. Sheets and Mr. Moyle that it would be necessary to discharge truck drivers in order to secure new insurance was the result of their own intimate knowledge of the insurance business and insurance companies' requirements (R.1021). That this conclusion was sound is amply supported by additional evidence. After the discharge the various insurance agents who were approached for insurance considered the discharge of the drivers as a reason for writing the insurance and new insurance ultimately written was upon the basis that the drivers had been discharged. Mr. Benson, an insurance agent, studied the risk and made a proposal to the respondent. Mr. Sweeney, his agent in Idaho, proposed accepting the risk upon the condition that the drivers would be discharged (R.763). Mr. Benson was asked and answered the following question:

"Q. I will ask you to state in that connection whether or not, if the drivers involved had not been dis-

charged, would you have considered the writing of this insurance under any circumstances?

A. No, sir." (R.765-6).

The proposal to accept the risk and write the insurance made by the company Mr. Benson represented is contained in respondent's Exhibit No. 5 (R.768). It is to be noticed that in this proposal it is recited:

"These quotations are submitted with the understanding that you have discharged all drivers in your employ prior to October 17, 1941, and that none of these old drivers will be rehired."

The new insurance was finally secured through an insurance agent named Walter W. Watkins and one of the statements inducing the acceptance of the risk was that the truck drivers had been discharged. Mr. Watkins testified:

"I told Mr. Salisbury—he is the manager of the Kolob Corporation * * * that the Idaho Refining Company was getting new drivers, and intended to install this safety campaign wherein they would pay bonus rewards to drivers who were not involved in accidents, and Mr. Salisbury took the matter up with the Denver office." (R. 778, 779).

"Q. You heard Mr. Salisbury discuss this matter over the telephone with Denver?

A. I was in his office at the time he discussed it.

Q. And what representations did he make to Denver?

A. He explained to Mr. Lou Gerding, the branch manager, that this line was being cancelled by the Metropolitan Casualty Insurance Company. He

explained to him that it was because of the high loss ratio and frequency of accidents, that we had been assured that there was to be a new set of drivers on these transport units. I think that there were—if I remember right, I think that Mr. Moyle told me that there were some 17, in that neighborhood, 17 or 18, I believe he said, and Gerding, if I remember correctly, called us back and said it was all right to issue a binder for ten days. Then we figured the premium on the risk and submitted it to you for approval, and it was given to us on November 24th" (R.780-1)

"Mr. Moyle explained to me that he was going to use more care in selecting new drivers, and that they were going to install this safety campaign. That was the reason for our entertaining the insurance." (R.783)

Henry D. Moyle came to Pocatello November 13, 1941, and advised Gilbert D. Moyle, the General Manager, and Frank Copening, the Secretary, of their decision to discharge the drivers in order that they might get new insurance.⁽²⁾ This order was reluctantly carried out by the local manager (R.1006). Kermit Rice was instructed to carry out the orders and did so on the early morning of November 14, 1941. The

⁽²⁾ The petitioner's brief suggests that there is a conflict in the evidence in Copening's statement that the decision to discharge the Pocatello drivers was made on November 13th. This was a natural statement as far as Copening was concerned. He first heard of it on the 13th, but the discharge was not determined by him or by Gilbert Moyle. Copening himself said that Henry Moyle informed him that to put the company in such a position that it could get insurance it would have to get a new crew of drivers (R.650).

drivers were advised that the discharge was rendered necessary because of the cancellation of insurance due to heavy losses.

The discharge of these drivers was therefore a matter of business necessity and expediency and had not the slightest connection with union activities. Not only did Mr. Sheets and Mr. Henry D. Moyle know nothing of union activities or membership of these drivers, but there is no substantial evidence in the record indicating or even suggesting that Gilbert D. Moyle, Frank Copening, Kermit Rice, or any other supervisory employee in the plant at Pocatello had any such information, and each of them definitely denies that he did have such knowledge. The evidence shows, without contradiction, that the first affirmative act tending to give notice to the respondent of membership of any employee in the union was the presentation of the contract late on the morning of the 14th after the decision to discharge all the drivers had been made and after most of them had been told of it.

Some of the drivers had not had accidents, but they belonged to the group which President Sheets and Vice-President Moyle regarded as a unit in fixing the blame for the insurance cancellation (R. 1005, 1032, 799, 802). Whether the judgment of the officers of respondent in handling the problem as they did was right or wrong is not a matter for the Board's consideration. We submit that well adjudicated cases definitely support the respondent in this particular.

It is held in *National Labor Relations Board vs. Union Manufacturing Company* (C. C. A. 5th) 124 Fed. (2d) 332:

"It is unnecessary for an employer to justify the discharge of an employee so long as it is not for union activities."

This same thought is expressed in *National Labor Relations Board vs. Jones and Laughlin S. Corp.* 301 U. S. 1, 81 L. Ed. 893, on page 916, as follows:

"The Act does not interfere with the normal exercise of the right of the employer to select its employees or to discharge them. The employer may not, under cover of that right, intimidate or coerce its employees with respect to their self-organization and representation, and, on the other hand, the Board is not entitled to make its authority a pretext for interference with the right of discharge when that right is exercised for other reasons than such intimidation and coercion."

In *Jefferson Electric Company vs. National Labor Relations Board* (C. C. A. 7th) 102 Fed. (2d) 949, 957, it is said:

"Under the National Labor Relations Act, the right to hire and to discharge remains inviolate, when exercised for ordinary ends. The employer may still discharge for good cause or no cause at all."

In the case of *National Labor Relations Board vs. Union Pacific Stages* (C. C. A. 9th) 99 Fed. (2d) 153, 177, this Court said:

"The National Labor Relations Act was not intended to empower the Board to substitute its judgment for that of the employer in the conduct of his business. It did not deprive the employer of the right to select or dismiss his employees for any cause except where the employee was actually discriminated against because of his union activities or affiliation * * * The Act does not vest in the Board managerial authority."

In *National Labor Relations Board vs. Williamson-Dickie Manufacturing Company* (C. C. A. 5th), 130 Fed. (2d) 260, 267, the Court says:

“In view of the very large powers and wide discretion granted by the Act to the Board and the grave consequences of an abuse of these powers and this discretion by the Board, we cannot, in the exercise of our function in enforcing the Board’s lawful orders and in refusing to enforce those which are not, too often repeat, that it has not been given to the Board to substitute its own ideas of discipline and management for those of the employer. It has not been given to it to supervise and control, except as precisely set out in the act, or set standards for, the supervision and control of employee and employer relations.”

In view of the argument of the Board that the decision to discharge the drivers was made at Pocatello on November 13th, let us analyze the testimony of Henry and Gilbert Moyle and of Gilbert Sheets, as well as that of Captain Frank Copening and get a picture of the relationship of these men to each other and the company. We should remember that Gilbert Moyle, the manager, and Frank Copening, the secretary, resided in Pocatello and their office was there, while the president and vice-president, Gilbert Sheets and Henry Moyle, lived and had their offices in Salt Lake City, Utah. While these latter received a daily financial report, from the refinery, these reports did not contain anything of the activities of the drivers (R.808). When on November 10th the company was notified that its insurance would be cancelled on the 17th, Henry Moyle was on the coast. It was the 12th before he returned to

Salt Lake and still nothing had been accomplished toward getting new insurance. Henry Moyle and Gilbert Sheets then sat down in Henry Moyle's office and evolved a plan which to them would be the most effective way of convincing insurance companies that the Respondent planned to eliminate the accidents as far as possible and get a better accident record (R.798-9, 1003). It was too late at that time to institute regular safety measures. Something swift and instantly obvious had to be done.

The Board found that it is unlikely that any insurance company would have required the Respondent to discharge drivers with perfect records. We have already pointed out that at least one insurance company required that the drivers remain discharged as a condition to its insuring the company's trucks. Furthermore, the Board introduced no testimony that any insurance company would have written new insurance on the basis suggested in the finding. The Board's brief waves aside the fact that Benson, agent of one insurance company, and Watkins and Salisbury, agents of another company, required the discharge of the drivers, on the theory that these men were insufficiently informed of the true state of affairs. The fact is, however, that they were as well informed of the state of affairs as the President and Vice-President who made the decision to discharge the drivers. Neither of these officers, in the immediate urge of obtaining new insurance, stopped to get the old accident records from the insurance company to find out which of their drivers had had accidents and which had not, even if these records were available, which does not

appear⁽³⁾. Even by the time of the hearing it had been difficult to get them (R. 1033). The President and Vice-President did not have them when they made this decision (R.1022). Without records they made the decision then and there to discharge all of the drivers in order to get insurance, and without any knowledge of their union activities. It might have been better if it had been possible to pick out only those drivers who had had accidents, but we cannot properly look back now and from our hindsight determine whether the best judgment was exercised. The crux of the matter is that the decision was made and that union membership had nothing to do with the decision.

Why were only the drivers of Pocatello discharged and not the drivers of the Idaho Gas & Oil Company and the drivers on the Columbia River in Oregon and Washington under the direction of R. E. Stiff? This question is raised by Petitioner's brief. An understanding of the set-up of the Idaho Refining Company clearly answers this question. We believe that a careful analysis of the evidence explains why no thought was given to the discharge of any but the Pocatello drivers.

There were five distinct sets of equipment which were insured under the policies taken out by the Idaho Refining Company:

⁽³⁾ The Board's brief urges that the accident record of Respondent's drivers were admittedly available at Salt Lake City on Nov. 12th. The record references there made do not sustain this contention. The uncontradicted evidence is to the contrary (R. 1022). Only the major wrecks had been reported (R. 1003, 1019). Neither is there evidence that the employment records at Pocatello would have shown the individual accident records.

1. The heavy transports—trucks and trailers hauling out of the plant at Pocatello. These constituted by far the main portion of the long haul equipment under the policy (R. 804, 806).

2. The long haul equipment consisting of some four or five trucks and trailers under the direction of R. E. Stiff. These worked out of Baker, Oregon. Stiff owned the trucks originally and transferred them temporarily to the Idaho Refining Company when the source of his gasoline from the Inland Empire Refinery dried up. Companies ceased shipping gasoline to Attalia and Umatilla. The transfer to Idaho Refining Company was a temporary one and the trucks were later turned back to Stiff. Stiff was to have control of the drivers (R.994). Stiff, however, and the drivers, were on the payroll of the Idaho Refining Company at the time that the Pocatello drivers were discharged.

3. The Covey Gas & Oil Company trucks—small runabouts for distribution between close stations. Some of these trucks were owned by the Covey Gas & Oil Company, a subsidiary of respondent Idaho Refining Company; others were owned by individual operators.

4. Trucks operated under the direction of Sheppard in Boise and owned by individual service station lessees who were buying the trucks through the Idaho Refining Company, and which were on the policy by virtue of the lien held by the respondent on these trucks. The trucks were owned and driven by these individual service station operators and the respondent had no control over them. Pierson is one instance of this

(R.674). Conrad is another (R.678). The operation of the men out of Boise was separate and distinct from that of the operation of the drivers out of Pocatello. They were not connected in any way with the refinery and they got their gas from a different source. Even if Gilbert Sheets and Henry Moyle had had the power and authority to discharge these men it would have been surprising if they had thought to include those drivers.

5. Personal cars owned by employees of the respondent and Covey Gas & Oil Company. These cars were not involved in any accident and the drivers were employees in various capacities.

If it be assumed that union membership was the basis of discharge of the drivers, why were not the drivers under the direction of Stiff discharged at the same time? It was known definitely that they were members of the union (R. 532, 534, 623). This, we believe, is a complete refutation of the inference that the discharge of the Pocatello drivers was due to their union membership. In view of the fact that the bulk of the driving, the bulk of the work, the center of interest of Gilbert Sheets and Henry Moyle was in the Idaho Refining Company plant at Pocatello, it is natural that when they decided to discharge drivers as proof to insurance companies of their intention to reduce losses they centered on the Pocatello drivers. In fact, under the circumstances and the haste of their decision caused by the necessity of getting new insurance it would have been surprising if they had done otherwise.

The Board's analysis of the records of the drivers who were discharged and those who were not discharged is totally

beside the point. It would have been pertinent had there been any claim that the Pocatello drivers were discharged because of their driving records. This was never the claim. They were so discharged because the officers decided that the discharge of the group was necessary to present a clear picture to the insurance companies.

On page 20 of Petitioner's brief is a list of the drivers from Pocatello and other points on which the insurance company paid claims. We should remember that the insurance company paid claims on all the cars in which the respondent had an interest, even as mortgagee. *Every driver named in that list, in both notes 20 and 21, who the evidence shows was an employee of the Respondent, was discharged.* There is no evidence that any of the men listed in footnote 21 except Douglas were employees of the company. Douglas was discharged. The record is uncontradicted that Pierson (Pearson) and Conrad were lessees, not employees (R.674), and that Crawshaw was an employee of Idaho Gas & Oil Company.

It is to be remembered that the Pocatello truck drivers formed a unit out of which the most serious accidents occurred, and when Gilbert Sheets and Henry Moyle considered the problem they looked upon the unit as the offender rather than the individuals (R.802).

In spite of the cleverly inaccurate arguments on pages eleven and twelve of Petitioner's brief there is not one word of evidence in the whole record that the reason for the discharge was the union membership of the drivers. Most of the drivers joined the union in September, 1941, and the "inten-

sive membership drive'' mentioned in the Petitioner's brief was made a full two months before the discharge (R.415). Why were not the drivers discharged at that time rather than when the insurance was cancelled if the discharge was for union activity, and if the Respondent was as bitter against unions as the Petitioner's brief argues?

An analysis of the union activities of those drivers who were discharged and who were not discharged leaves the Board's finding without substantial evidence to support it.

We have already shown that the River drivers who were not discharged were nevertheless members of the union (R.534). A finding that the Pocatello drivers were discharged because of their membership in the union necessarily overlooks the fact that two of them, K. C. Brower, and H. H. Hendrickson, were not themselves members of the union. Brower was in difficulties with the union and Hendrickson did not get a bid, though he tried to get in and paid a preliminary \$6.25 (R. 484-497, 585, 586, 690). That the company was not antagonistic to the union membership of the men it discharged is definitely proved by the fact that it offered re-employment to a number of them. R. E. Miller was re-engaged March 11, 1942 (R.602) and, at the time of the hearing, was still working for the company. Obviously, his membership in the union was no deterrent to his re-employment. The offer of employment to other union drivers is significant and bears out Respondent's contention that they were discharged because of insurance problems and not because of their union activities. Within a month after their discharge as drivers they were offered reemployment in the company,

not as drivers, but as workers on the loading docks. Myron Whitesides was offered re-employment December 14, 1941, on the loading dock (R. 909, 910). He was at that time working for the Covey Gas & Oil Company. He accepted employment with the Respondent February 11, 1942, where he remained until June 19, 1942 (R. 910, 911) when he left of his own accord. John Evans and Boyd Cornia were both offered re-employment on the loading docks on December 15, 1941, but each declined employment because he said he had been advised by the union that it would hurt his case against the Respondent (R. 912, 913). Evans, who testified for the Board, admitted this offer and his rejection (R.520). S. R. Burkholder was offered employment February 20, 1942, but declined because he secured employment with Garrett Transfer Company (R.916).

The fact that a number of these men were thus offered re-employment is, we contend, striking proof that they were discharged because of the cancellation of the insurance and not because of membership in the Teamsters Union, nor activities on its behalf.

On this point the Fifth Circuit Court of Appeals said in *National Labor Relations Board vs. Dixie Motor Coach Corp.* (C. C. A. 5th) 128 Fed. (2d) 201, 203:

“Further, Wilkinson on two occasions was offered other positions with the companies which he declined for reasons of his own, and the companies did not hire any new employee prior to Wilkinson’s refusal of the employment offered. Such manifest willingness to continue Wilkinson in their employ is wholly inconsistent with the theory that the companies discharged

him illegally because he gave testimony at the hearing, and the finding of discriminatory discharge cannot be upheld."

It is further to be remembered that Guy Campbell was a member of the union at the time he was working for the Idaho Refining Company (R.586). If it be presumed that the company had knowledge of union membership of the discharged drivers in November, 1941, the presumption should go as well to knowledge of Campbell's union membership months prior to that time, yet no action was taken against Campbell because of union activities.

A fair consideration of all of the testimony leads unquestionably to the definite conclusion that these men were discharged for reasons stated by the President, Gilbert S. Sheets, and the Vice-President, Henry D. Moyle, following the notice of cancellation of insurance and, as these officers honestly believed, to make it more likely that the Respondent could secure other insurance.

2. Discharge of Leo Archibald

The Board found that Leo Archibald, one of the four mechanics in the Respondent's shop, was discriminately discharged because of his union membership and his activities on behalf of the union. There is no substantial evidence upon which this finding can be based and all the evidence is to the contrary. It shows:

1. That Archibald's activity was unknown to the Respondent and was so little noticeable that some of his closest associates knew nothing about it;

2. That though two of Archibald's co-workers also joined the union with him they were not discharged;

3. That Archibald's work was unsatisfactory, and had been the frequent cause of complaints from his superiors, which complaints were becoming more frequent immediately prior to his discharge; and that he was discharged because of his misconduct.

Archibald testified that he made some effort to secure union memberships and delivered some union dues to the union secretary. There is not even a scintilla of evidence that such activities were known to the Respondent or to Archibald's superior.

It is significant that Earl H. Brown, the mechanic who worked daily alongside of Archibald all summer and who worked with him more than any other man, did not know that Archibald was a member of any union. His uncontradicted testimony is as follows:

"Q. Had Mr. Archibald ever said anything to you about being a member of a labor union?

A. No, sir.

Q. Did you know whether or not he was a member of any labor union?

A. No, sir.

Q. Had that matter ever been discussed between you and Mr. Archibald?

A. No, sir.

Q. Had his membership in any labor union organization ever been discussed by you or anyone else?

A. Not that I ever recall.

Q. Did you know whether or not he was a member of any union?

A. I did not.

Q. And you worked right alongside of him during the entire summer?

A. Yes, sir." (R.843).

When the evidence shows such little union activity on the part of Archibald that his co-worker knew nothing about it, certainly it cannot be surmised that Rice and the respondent knew of it. There is not one word of evidence in the record to the effect that Archibald's union activities came to the notice of higher management officers, yet the Board's finding is based upon the inference that they had such notice, and this in spite of definite denials of Rice (R.876) and of Gilbert Moyle (R.961) that they knew he had joined the Union. Archibald himself admitted that Rice at the time he was employed did not ask anything about his labor affiliations and at no time suggested to him what he should do in reference to his labor associations (R.434).

If it be assumed that Rice and the Respondent knew that Archibald had joined the union the assumption should apply as well to his associates Orin Thomas and Wayne Nord, both of whom joined the union with him (R. 441, 450, 690). If union membership, then, was the basis of Archibald's dis-

charge Orin Thomas and Wayne Nord would have been discharged with him, but they were not.

Leo Archibald was discharged because of poor work and absences which all resulted directly from his drinking and drunkenness. Through his drinking he was away from work more than any of the other mechanics; frequently when he was on the job his work was slow and unsatisfactory. Sometimes he could not work at all. On one occasion he burned a hole in a tank four inches from the spot he was supposed to be welding (R. 868, 443, 850). At that time Archibald had been drinking (R.851); he could hardly get out of a fifteen-foot wide door (R.867). On five or six occasions Archibald reported though he was not able to work. "He would show up sometimes and would get sick and have to lay off or go outside or something and he wasn't able to get down under a truck and work" (R.838). At one time he came to work, left, and went outside into a car and stayed there all day. At that time "Spike" Henninger met him coming out of the door, looked at him a minute and said: "Boy, you sure had a tough night!" Archibald's eyes were all bloodshot and his face was very red. He wasn't any too steady on his feet and his breath smelled of liquor. Later Rice went over to Henninger and asked him whether he had seen Archibald; that Archibald had disappeared. Still later Rice noticed him in a car outside the gate (R. 870, 906).

Archibald's work became more and more unsatisfactory (R.866). His co-worker began to complain. Brown said: "I would have to stay and do the work on account of him not

being able to work, and I would have to come back nights to do it, because we were shorthanded by him laying off, and he finally was too slow to keep up his end of it, the way I looked at it, and I mentioned it to Mr. Rice a time or two." (R.839). About two or three weeks before Archibald's discharge, Henninger asked Rice when he was going to get somebody that could hurry up a little bit. He had reference to Archibald at the time (R.907). Gilbert Moyle, who had had complaints from Rice and Brown that Archibald had been drinking and was laying off too often, told Rice about November 1st that he did not see why Rice put up with him any longer. Rice said: "As soon as we complete the work that we have on hand we will get rid of him" (R.960). The climax came on the Monday prior to Archibald's discharge. Once again when he came to work he said he had the bellyache. He had been off the day before that. Rice said to him that he just couldn't stand that kind of carryings-on any more at all (R. 871, 899). Archibald was all bent over. His eyes were bloodshot and Rice concluded from that that he had been drinking again (R.901). On that day Rice fully made up his mind to discharge Archibald (R.879).

Rice kept Archibald on after that Monday until some work was completed and then discharged him at 8:00 o'clock on the morning of November 14th (R.879).

The officers of the company left the discharge of Archibald entirely up to Rice, and knew nothing of the actuality of his discharge until after it was effected. Rice never received a specific order to discharge him on the fourteenth (R. 961, 1004).

National Labor Relations Board vs. Dixie Motor Coach Corp. (C. C. A. 5th), 128 Fed. (2d) 201 involved the drinking by the discharged employee in question. On page 203 the Court said:

"Against this overwhelming evidence indicating that the reason for the discharge of Richards was that assigned by the manager, the record contains only the following: Richards' denial that he had been drinking regularly or was drunk on the occasion immediately preceding his discharge; evidence that Richards was an active union member and that his membership might reasonably have been known by the management; and the background of the hostile attitude of the companies toward the union. The public interest, as well as that of the employer, requires of any one entrusted with the lives and safety of the traveling public that he conduct himself in a manner in keeping with his responsibilities. We think the record is without substantial evidence to support the finding that Richards was discharged because of union activity, and that the reinstatement of such an employee to such a position would do violence to the public welfare and to the purposes of the National Labor Relations Act. The undisputed facts show that this employee's drinking habits were such as to place upon his employer the duty to discharge him."

In *National Labor Relations Board vs. Sheboygan Chair Company* (C. C. A. 7th) 125 Fed. (2d) 436, on page 439 the Court said:

"We think the Board was unwarranted in its conclusions based upon an inference drawn from the fact that Moegenburg belonged to the union, attended a union meeting, there made a complaint, and during the adjustment of that complaint Moegenburg said Hamilton 'bawled me out for squawking to other peo-

ple.' There is not one scintilla of evidence that Hamilton or any of the officials of the respondent knew that Moegenburg belonged to the union or that he had attended the meeting or knew about the complaint he had made at the meeting. There is no evidence as to who the 'other people' were to whom Hamilton referred. There is an abundance of undisputed evidence that Moegenburg was a chronic 'squawker' and 'squawked' to his fellow workmen repeatedly.

"When honorable men, wholly unimpeached, testify under oath to their reasons for discharging a man and such reasons are supported by all the evidence in the case and are not in any way connected with the discharged employee's union activities, the Board is not justified in discarding all of this evidence and finding the employer guilty of an unfair labor practice based upon a sequence of three or four unrelated events."

In *National Labor Relations Board vs. Thompson Products, Inc.*, (C. C. A. 6th) 97 Fed. (2d) 13, the Court said that the small value of the lamp stolen by a discharged employee was of little importance, though the Board in its findings, laid emphasis on this point. That was a matter for the management to decide. On page 16 the Court said:

"An employer may properly refuse to continue in his employ any person who has shown himself to be dishonest, incompetent, inefficient, negligent, or unfaithful to his employer's interest or otherwise unfit for the service in which he is engaged. The National Labor Relations Act does not abrogate any of these prerogatives, nor can employees use it as a shield for dishonesty or incompetent and inefficient service."

It is to be remembered that Archibald was working on trucks engaged in interstate commerce. Particularly applicable

is the case of *National Labor Relations Board vs. U. S. Truck Co.* (C. C. A. 6th) 124 Fed. (2d) 887, wherein, on page 889, it is said:

“Under the regulations of the Interstate Commerce Commission, 49 C. F. R. 193.3 all motor carriers and their officers, agents, employees and representatives are required to comply with the regulations relating to the driving of vehicles, and every motor carrier must require that its officers, agents, employees and representatives shall become conversant therewith. Section 193.6 provides that no driver shall go on duty while under the influence of nor drink while on duty any alcoholic liquor or beverage nor knowingly be permitted so to do. In compliance with Sec. 193.3, the respondent had promulgated rules applying to all employees, forbidding the use of intoxicating liquor while on duty. The continuing failure to discharge Graham, who was a driver, endangered the public safety, was a violation of the company’s rules, the safety regulations, and the State statutes and was cause

for revocation of the license to operate. Warrem was the chief body repairman for trucks and trailers. In that position he was responsible for the condition of tailboards or tail gates, doors, and other parts of the trucks and trailers, the importance of whose condition for public safety is expressly recognized by the safety regulations, 49 C.F.R. 193.10. The public safety required that Warren also comply with the rules as to use of intoxicating liquor when on duty. Obedience to the express provisions of the regulations and of the state statutes required the dismissal of Graham long before the company acted. Obedience to their spirit also required the dismissal of Warrem. The same considerations require that Graham and Warrem be not reinstated * * * Where the order of the Board as to reinstatement indisputably requires the employer to violate other statutes highly important to the public safety, even though union membership is found by the

Board to be the ruling motive for the discharge, this court has authority to vacate the order as violative of public policy and contrary to law."

We may summarize the discharge of Leo Archibald by paraphrasing the words of the Second Circuit Court of Appeals in *Ballston-Stillwater Knitting Co., Inc. vs. National Labor Relations Board* (C. C. A. 2nd) 98 Fed. (2d) 758 on page 764 as follows:

"The inference that [Archibald] was discharged because of [his union] membership instead of [his] violation of the rule and [his] habitually poor work is too arbitrary to stand. To sustain it on such a record would grant to members of a complaining union absolute immunity from discharge for inefficiency."

The evidence is uncontradicted that Archibald's conduct was unsatisfactory to his superiors, both Rice and Gilbert Moyle. Archibald himself admits criticism (R.446). There is no question that his defalcations became more annoying as they continued. The final straw was his drunkenness and absence on the Sunday and Monday preceding the discharge. Rice's testimony is uncontradicted that he determined on Monday, the 10th, to discharge Archibald, and that he did so discharge him as soon as certain work was finished. To say that the "few minor derelictions which were admitted by Archibald were not the motivating cause of his discharge" (R.54) is to disregard all the evidence of the growing dissatisfaction of Rice, Henninger and Moyle with Archibald's work and to substitute mere surmises and conjectures for substantial testimony to the contrary.

In *Wilson & Co. vs. National Labor Relations Board* (C. C. A. 8th) 123 Fed. (2d) 411, the Court pointed out, on page 418 that the superintendent gave the reason for his not employing a certain individual, who the Board had presumed was not employed because of her union leanings. It said:

“Obviously, this presumption of the Board cannot stand as against this positive, uncontradicted and unimpeached evidence.”

So, we urge, the Board's presumption that Archibald was discriminatorily discharged should not stand against the uncontradicted evidence of his poor workmanship and the dissatisfaction of his employers with his conduct and type of work.

We invite the Court's attention to the fact that both the Examiner and the Board in their findings and decision went to great lengths to discard Respondent's reasons for Archibald's discharge and struggled desperately for reasons to support the charge of discrimination (R. 98, 105, 53-55). They found it significant that Archibald was discharged on November 14th, the same day that the drivers were discharged. This, together with Archibald's union membership and some solicitation of other members, all of which was unknown to the Respondent, constitutes the entire basis for the finding of discriminatory discharge and this, we urge, is not substantial evidence and the finding is wholly unsupported.

3. *Discharge of Wayne Douglas*

The Board found that Wayne Douglas was discrimina-

torily discharged, but, because of his accident record in the handling of Respondent's truck, it does not require reinstatement nor any back pay.

The Respondent contends that the finding of discrimination in the discharge of Douglas is not supported by any substantial evidence. No such evidence is recited in the Board's comment touching this discharge. The Board's comment in its decision is restricted to an attempt at refuting the Respondent's explanation of the discharge, rather than asserting any evidence justifying its conclusion (R. 55, 57). This is the natural result of lack of evidence of discriminatory discharge.

In *Interlake Iron Corp. vs. National Labor Relations Board*, 131 Fed. (2d) 129, the Seventh Circuit Court of Appeals said, on page 134:

"The company does not have to prove non-discrimination because of union activities. The Board must prove discrimination because thereof. This burden of the Board to prove discrimination and to prove that discrimination was employed in the hiring or firing of a man because of his union activities does not shift from the Board. *National Labor Relations Board vs. Union Manufacturing Co.*, 5 Cir., 124 F. 2d 332, 333; *Hazel-Atlas Glass Company vs. National Labor Relations Board*, 4 Cir., 127 F. 2d 109."

In its brief the Board stresses the fact that five weeks passed between the time of Douglas' accident, for which he was discharged, and the date of his discharge. The Board also mentions this in its decision. A search of the records shows why this period of time elapsed. Douglas originally drove for the Respondent out of Pocatello until he was discharged because

he had misrepresented his age (R.535). When he became of age he was re-hired in 1941 and worked out of Baker, Oregon, under the direction of Earl Stiff. The relationship between Stiff and the Respondent was peculiar. Stiff originally owned his own trucks. For a period he transferred those trucks to the Respondent and was on the Respondent's payroll, but his relationship was almost that of an independent contractor (R. 993, 994). He insisted on independence so far as the handling of his own drivers was concerned. During the period of time in which the Respondent operated Stiff's trucks and kept Stiff on its payroll, it was agreed that Stiff had the right to re-purchase his trucks and that Stiff should "hire and fire" his own drivers (R.994). Stiff had told the Respondent that he was particularly anxious to keep the drivers that he then had working on the equipment and that he would not enter into this agreement unless he could "hire and fire" his own drivers.

Wayne Douglas on October 16th drove a transport loaded with gasoline off his route into Weiser, Idaho, to see his sister and a girl friend (R.957). In Weiser he drove too fast and, while going around a corner in the residential part of town, tipped over, smashed his transport, and poured more than 4000 gallons of gasoline down the street, into the gutters and into the sewer (R. 545, 956). His carelessness was inexcusable, and Douglas admitted that he expected "a lot of criticizing." Gilbert Moyle, when he heard of this accident, rushed over to Weiser, saw the wrecked truck and told Stiff then and there to discharge Douglas, using the following language: "Lay him off, fire him right now, I am through with such

driving." (R.957). Gilbert Moyle returned to Pocatello and understood that Douglas had been discharged (R.958). Stiff apparently did not follow the directions. When the next payroll records came down to Pocatello from Baker, Oregon, they showed that Douglas was still driving for Stiff. When Gilbert Moyle examined the payroll he discovered that Douglas' name was on it and again immediately ordered Stiff to discharge Douglas (R.959). This was November 20th (R.542).

It is hard to understand how the Board can draw an inference that the reason for Douglas' discharge was his union membership or activities. There is no evidence of any union activity on the part of Douglas, except his membership in the union; and all of the drivers working for the Respondent out of Baker, Oregon, under Stiff were also members of the Union (R.534). Douglas, of course, was a member of Local 440, as were the other discharged drivers (R.539), but there is no testimony to support an inference that Douglas would be discharged by the Respondent because he was a member of Local 440 while the Respondent would leave untouched those drivers who were members of the Baker Local. Such an inference imputes not only intimate knowledge of union connections of each of the employees but also implies a dislike of one Local above that of another. There is nothing in the testimony to show this. The Board has not ordered the reinstatement of Douglas, and this discussion is academic, except for the attempt by the Board to tie in Douglas' discharge with that of the other drivers in an apparent desire to strengthen the charge of discriminatory discharge of these other drivers.

D. *The Board's Unfounded Inferences of Discrimination*

In the beginning of that section of its brief which discusses the discriminatory discharge of the drivers the Board tries to justify its ruling that the drivers were discriminatorily discharged by setting forth certain alleged anti-union remarks of the employees of the Respondent. The employees themselves denied having made these remarks and many of them are in the record over the objection of the respondent that they were hearsay. Other comments have been taken out of their setting by the witnesses and misinterpreted. For example, Supt. Rice is claimed to have assured a new truck driver that he had a job as long as he went along and did his work; that the discharged drivers were never going to drive out there again. What actually happened in that conversation was that Rice, hearing that the discharged drivers had threatened to attack Moss in a restaurant, told him to stay away from those fellows to keep from getting beat up (R.892). The Board's brief attempts to show an anti-union attitude on the part of the Respondent in its alleged efforts to "insulate" the new drivers at Pocatello. It quotes the hearsay evidence of McBride who testified that Stiff had told him that Gilbert Moyle had told Stiff that these drivers transferred from the Columbia River section to Pocatello must not talk union to the Pocatello drivers. Besides being pure hearsay, this is not credible for the reason that McBride and the other river drivers had already worked in and out of Pocatello, had had previous contacts with the Pocatello drivers, had met them frequently at service stations where they were servicing the same territory and already had ample opportunity if they desired to discuss union matters with them (R. 628-629).

McBride further testified that Gilbert Moyle said that if the drivers joined the union, he would "can" them and if he could not get other drivers, he would hire old women. A ridiculous statement like that should be questioned at the outset. Either it was not said or it was said jokingly. That it is not a true manifestation of Gilbert Moyle's attitude is shown by his employment of McBride himself at that time, knowing he was a union driver (R.629). He later hired other men who had been working for Stiff—all union members, to work for him out at the refinery, knowing that they were union laborers (R.532-534).

Furthermore, R. E. Miller, one of the discharged drivers, was re-employed, although he belonged to the union. Henninger, the Respondent's foreman, told him that it would not make any difference whether he belonged to a labor union or not (R. 612, 613). Kermit Rice (R.865), Guy Campbell (R.586) and the river drivers (R.533-534) were all union employees of the respondent. So were the men offered jobs on the loading dock: Evans, Corina and Burkholder (R.913-917). The attitude of the Respondent toward labor unions should be judged by its acts, rather than by these alleged statements of its agents. These acts show not anti-union activity, but the reverse.

That such statements and the others mentioned in the report, if made, did not express the attitude of the company nor have the effect charged by the Board is certainly proved by the attitude of the Respondent toward labor unions in general, as shown by its course of business. All of the major improvements and additions built by the Respondent were

done so by union labor. A \$60,000.00 asphalt plant, a several thousand dollar boiler house, a heating unit, additions to the office building, and miscellaneous small improvements were built with union labor pursuant to an agreement with labor representatives (R.945-947). During these extended periods of construction, the Idaho Refining Company employees were working all the time with the union craftsmen (R.947).

The history of the company's dealing with its employees definitely proves that the employees had absolute freedom to join any union they desired. In the spring of 1939 Mr. Rosqvist, a union state secretary, expressed a desire to unionize the plant (R.813). The Respondent thereupon caused to be called a meeting of all of its employees and invited labor leaders Rosqvist and Brandt to address the meeting (R. 681, 814). When the employees assembled, Webb, Secretary of the company, advised that these men were present for the purpose of explaining the benefits of labor unionism and that the members could do exactly as they pleased with respect to it; that they could join the unions or not, as they desired. It was entirely up to the employees (R. 278, 635). The union representatives spoke to the employees and fully explained their views. Following this and in the absence of the labor leaders and company officials the employees freely expressed their desires by vote (R.636).

The Board's brief further attempts to show an anti-union attitude of the Respondent by random statements of two supervisory employees of the Respondent (Rice and Miller) made after the discharge. By doing this, the Board attempted to show Respondent's attitude through its witnesses' inter-

pretation of Rice's and Henninger's post mortem conclusions of what might have been the reasons for the discharge. In the first place, there is nothing to show that Rice and Henninger were ever confidants of the officers of the Respondent who decided the discharge. Everything in the evidence points to the contrary. In the second place, a conclusion of employees uttered after an event as to the reason for that event is far from evidence that should be recognized as substantial.

In *National Labor Relations Board vs. Mathieson A. Works* (C. C. A. 4th) 114 Fed. (2d) 796, the first point is quite fully discussed. The ruling of the Court, as expressed in Syllabus No. 3, is as follows:

"Sporadic activities, on the part of foremen, not authorized by the employer and not resulting in interference with or domination of right of employees to organize and select bargaining representatives of their own choosing, does not nullify a choice freely made by the majority of employees acting on their own initiative."

Assuming that the statements were made as it is claimed—even assuming in contrast to the Respondent's acts that there was an anti-union attitude on its part—even under that assumption there is not sufficient evidence to warrant the decision of the Board that the discharges were discriminatory.

In *National Labor Relations Board vs. Goodyear Tire and Rubber Company*, 129 Fed. (2d) 661, the Fifth Circuit Court of Appeals said, on page 664:

"Accepting the preliminary fact findings of the Board as correctly found as to each, we think it clear that under the controlling principles of law its ultimate

finding in each case, except that of Parker, is wholly without support in the evidence. Taking them individually and as a whole, the ultimate findings or inferences of the Board were based on nothing more than that the evidence showed antipathy to United, and the persons discharged in each case for an assigned cause, were members of or applicants for membership in United. This will not at all do. Nothing is better settled in the law than that while discharges may not be made because of and to discourage union membership or activity, membership in a union is not a guarantee against discharge, nor does the fact alone, that an employer dislikes a union or a union man, prevent his exercising his undoubted right to discharge. Findings of the Labor Board just as findings of a jury, must rest upon evidence, not surmise or suspicion, *Magnolia Petroleum Company vs. N. L. R. B.* 5 Cir. 112 F. 2d 545. It is only fair to say however that the confusion of law in the mind of the Board, that antipathy toward a union once shown to exist, is all the evidence needed to convict of a discharge as an unfair practice, is a natural one. It arises from the fact of the Board's dual relation to the charge. Its right hand accusing, its left hand hearing as a judge, it is the most natural thing in the world for the Board to sometimes forget that as accuser it must make, as judge it must have, not surmise but proof, of the facts on which a finding of unfair practices is to be based. Quite natural too is it that occasionally the suspicion, surmise, feeling and conviction which gave legitimate force and vigor to it as prosecutor, should, in its dual capacity, be allowed to suffice for proof. But this of course will not do. For the Board as accuser must furnish to itself as judge, proof in such amount and quality, that one having no interest whatever as accuser and interested only in a just result, could reasonably draw the inferences of guilt which as accuser, it belabors itself as judge to draw

"We and other courts have in many cases set down the rule which must guide the Board in deciding matters of this kind. In *N. L. R. B. vs. Riverside Mfg. Company*, 5 Cir., 119 F. 2d 302, at page 307, we said of a discharge: 'The only facts found which at all tend to support the Board's conclusion that he was discharged for union activity are that he was a member of the union, and the management did not like the union or his belonging to it, and had said so. If real grounds for discharging him had not been shown, or if he had been discharged for trivial or fanciful reasons, these facts would have supported an inference that he was discharged for union activity, but when the real facts of the discharge appear, these facts are stripped entirely of probative force. For it is settled by the decisions that membership in a union is not a guarantee against discharge, and that when real grounds for discharge exist, the management may not be prevented, because of union membership, from discharging for them.' "

In *National Labor Relations Board vs. Tex-O-Kan Flour Mills Co.*, 122 Fed (2d) 433, the same Court said on page 438:

"In the matters now concerning us, the controlling and ultimate fact question is the true reason which governed the very person who discharged or refused to re-employ in each instance. There is no doubt that each employee here making complaint was discharged, or if laid off was not re-employed, and that he was at the time a member of the union. In each case such membership may have been the cause, for the union was not welcomed by the persons having authority to discharge and employ. If no other reason is apparent, union membership may logically be inferred. Even though the discharger disavows it under oath, if he can assign no other credible motive or cause, he need not be believed. But it remains true that the dis-

charger knows the real cause of discharge, it is a fact to which he may swear. If he says it was not union membership or activity, but something else which in fact existed as a ground, his oath cannot be disregarded because of suspicion that he may be lying. There must be impeachment of him, or substantial contradiction, or if circumstances raise doubts, they must be inconsistent with the positive sworn evidence on the exact point. This was squarely ruled as to a jury in *Pennsylvania R. R. Co., vs. Chamberlain*, 288 U. S. 333, 53 S. Ct. 391, 77 L. Ed. 819, and the ruling is applicable to the Board as fact-finder."

The facts in the foregoing cases are more against the employer than are the facts in the case at bar.

Because of some disputed testimony of isolated anti-union statements on the part of some of the officers, the Board concluded, in spite of the Respondent's many pro-union acts, that Respondent had an anti-union attitude. It then inferred that the discharge was effected because the drivers were union members. Against this inference is the established proof that the President's and Vice-President's decision was made in ignorance of union activity, to make possible the getting of new insurance. We submit that in the light of this proof the inference falls.

IV.

THE ORDER OF THE BOARD

When the record is viewed in its entirety the picture presented is substantially this:

The Pocatello drivers constituted a unit working out of the Pocatello plant. They were involved in serious accidents

within a short period of time. They undoubtedly realized this would make trouble for the Respondent. During this period of time they joined a union. When these accidents culminated in the cancellation of the insurance, the officers of the Respondent at Salt Lake City determined that the discharge of this group was essential in order to obtain new insurance. This was done, and the fact that these drivers belonged to a union and a few scattering remarks of various employees of the Respondent has caused the issuance of an order by the Board directing the disestablishment of the Association and the re-employment with back pay of various discharged employees. The fact that Archibald was discharged at the same time is a mere coincidence.

The Respondent contends that the order is not based upon findings supported by substantial evidence and that the direct evidence produced by the Respondent in support of its position has been disregarded by the Board and, therefore, this Court should not issue a decree in support of the Board's order.

Attention is further called to the fact that by this order the Respondent is required to offer re-employment and to make whole fourteen of the discharged drivers. It is not required to give further attention to the five drivers whom the Board finds are responsible for the "serious" accidents (R.60-63). There were, however, four additional drivers in this group who had been engaged in accidents but apparently because the amount of loss was not so great as with the others the Board failed to exclude them from the order of re-instatement. These drivers are Ellingford (R. 513, 751 and 789), Burkeholder (R.514), Evans (R. 527-530, 884) and Stanger.

The insurance was cancelled because of the frequency of the accidents as well as of the amount involved. The fact that the insurance company did not have to pay all these smaller losses was certainly immaterial in determining upon the discharge and if the order is to be upheld in any of its parts these four drivers should be excluded from reinstatement along with the other five. Furthermore, for reasons stated in this brief, Respondent should not be compelled to re-employ one who conducted himself as did Archibald, nor make additional payments to drivers who refused re-employment when the same was offered to them.

V.

CONCLUSION

It is respectfully submitted that the Board's findings are not supported by substantial evidence and that the order based thereon is invalid and improper and this court should not issue a decree enforcing said order in full, or at all, as prayed for in the petition of the Board.

HENRY D. MOYLE

DAVID L. MCKAY

Residence: Salt Lake City, Utah

A. L. MERRILL

R. D. MERRILL

Residence: Pocatello, Idaho

Attorneys for Respondent



